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COMPARISON BETWEEN DOUBLE MOVEMENT THEORY AND NAZARIYYAT AL-ḤUDŪD THEORY ON POLYGAMY LAWS

Khairul Hamim

State Islamic University of Mataram, Indonesia

khairulhamim@uinmataram.ac.id

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ABSTRACT

The issue of polygamy is one of the issues in Islamic family law which still become a hot, interesting, and updated debated topic to be studied, either in the view of state law or a theme for discussion, under the different interpretations in understanding the verses of the Qur'an. The theme of polygamy has been discussed by scholars in the books of fiqh and their interpretations. But, their views that have developed so far tend to reinforce the opinion that polygamy is permissible based on the text of paragraph 3 of surah al-Nisa. The verse is a source of polemic interpretation, by both classical and contemporary scholars on answering the question of whether polygamy practice is permissible or not. This paper focused on two contemporary scholars, namely Fazlur Rahman and Muhammad Syahrur. They have their views on the polygamy law. This research was normative legal research, using the approach of ushul fiqh and comparative law. The study indicates that Fazlur Rahman, with double movement theory, interprets fairness as a condition for the permissibility of polygamy with love and not material things, such as fairness in physical services. Meanwhile, Muhammad Syahrur, with his boundary theory (*nazariyyat al-ḥudūd*), interprets fairness as one's ability and obligation to look after, protect and raise orphans from polygamous widows. Apart from that, Syahrur also stated that the widow of being married in polygamy was a widow whose husband had died. The two theories have contributed new colors and the interpretation of Islamic law.

Keywords: Comparative Laws; Polygamy; Double Movement Theory; and *Nazariyyat al-Ḥudūd* Theory.

ABSTRAK

Persoalan poligami merupakan salah satu persoalan dalam hukum keluarga Islam yang hingga saat ini masih menjadi topik yang selalu hangat, menarik, dan *up to date* untuk dikaji baik dalam kaitannya dengan *state law* maupun sebagai tema diskusi dalam kaitannya dengan perbedaan interpretasi dalam memahami ayat Al-Qur'an. Tema poligami ini sejatinya telah dibahas oleh ulama terdahulu dalam kitab-kitab fikih dan tafsir mereka. Hanya saja, pandangan-pandangan mereka yang berkembang selama ini cenderung memperkuat pendapat yang membolehkan poligami berdasarkan teks ayat 3 surah al-Nisa'. Ayat 3 tersebut merupakan ayat yang menjadi sumber polemik interpretasi para ulama baik klasik maupun kontemporer mengenai boleh dan tidaknya berpoligami. Dua orang ulama kontemporer yakni Fazlur Rahman dan Muhammad Syahrur yang menjadi fokus dalam tulisan ini mempunyai pandangan tersendiri tentang

hukum poligami. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan ushul fikih dan pendekatan perbandingan hukum. Hasil penelitian ini menunjukkan bahwa Fazlur Rahman dengan teori *double movement*nya memaknai adil sebagai syarat bolehnya poligami dengan cinta kasih bukan yang sifatnya materil seperti adil dalam pelayanan fisik. Sementara Muhammad Syahrur dengan teori batasnya (*nazariyyat al-hudūd*) memaknai adil pada kemampuan dan kewajiban seseorang untuk memelihara, mengayomi dan membesarkan anak-anak yatim dari janda yang dipoligaminya. Selain itu Syahrur juga menekankan bahwa janda yang dinikahi juga adalah janda yang ditinggal mati oleh suaminya. Kedua teori tersebut telah memberi kontribusi dan warna baru dalam penafsiran hukum Islam.

Kata Kunci: Perbandingan Hukum; Poligami; Teori *Double Movement*; dan Teori *Nazariyyat al-Hudūd*;

Introduction

The issue of polygamy is one of the issues in Islamic family law which still become a hot, interesting, and updated debated topic to be studied, either in the view of state law or a theme for discussion under the different interpretations in understanding the verses of the Qur'an. The theme of polygamy has been discussed by scholars in the books of fiqh and their interpretations. But, their views that have developed so far tend to reinforce the opinion that polygamy is permissible (*ta'adud al-zaujat*)¹ based on the text of verse 3 of surah al-Nisa.²

This verse becomes the fundamental basis as well as the reason for the scholars in justifying whether polygamy is permissible or not. From the verse, the law on polygamy is permissible but conditional.³ According to Ibn Kathir,⁴ Ibn Asyur,⁵ and Al-Maraghi⁶ stated that fair, in the verse of al-Nisa, is fair in terms of serving the wife such as clothing, place, turn, and other things that are outward.⁷ Meanwhile, in terms

¹Nasaruddin Umar, *Fikih Wanita Untuk Semua* (Jakarta: Serambi Ilmu Semesta, 2010).

²“If you fear you might fail to give orphan women their ‘due’ rights ‘if you were to marry them’, then marry other women of your choice—two, three, or four. But if you are afraid you will fail to maintain justice, then ‘content yourselves with’ one or those ‘bondwomen’ in your possession. This way you are less likely to commit injustice.”

³Radli Makmun, *Poligami Dalam Tafsir Muhammad Syahrur* (Ponorogo: STAIN Ponorogo Press, 2009).

⁴Ibnu Katsir, *Tafsir Al-Qur'an Al-Azhim Jilid 3* (Cairo: Muassasah Qurtubah, n.d.).

⁵Muhammad Tohir Ibn Asyur, *Al-Tahrir Wa Al-Tanwir Juz 4* (Tunis: Dar Tunisiyyah, 1984).

⁶Ahmad Musthafa Al-Maraghi, *Tafsir Al-Maraghi Juz 4* (Cairo: Musthafa al-Babi al-Halabiy, n.d.).

⁷Asyur, *Al-Tahrir Wa Al-Tanwir Juz 4*.

of inner or spiritual, such as love and affection, is difficult for them to reach the fair. This statement is confirmed in the word of Allah sura al-Nisa' verse 129.⁸

Different from the interpretation of these scholars, Fazlur Rahman and Muhammad Syahrur have different views in affirming their own opinions and methods or theories in understanding the problem of polygamy. Fazlur Rahman, for example, uses the theory of double movement in analyzing the law of polygamy. While Syahrur uses the theory of *Nazariyyat al-ḥudūd*, known as the boundary theory. These two theories are interesting to study and then use as an analytical tool in studying the *illah*, permissible or not to practice polygamy, especially in today's contemporary era.

Many previous studies have discussed the thoughts of the two figures. For example, N. Nafisatur Rofiah,⁹ Zunly Nadia,¹⁰ and Fahmi Ulyati¹¹ studied the thought of Fazlur Rahman. While the thought of Muhammad Syahrur was studied by Muhammad Husnul,¹² Yassirly Amrona Rosyada,¹³ and Mushlihin.¹⁴ However, there is still no found comparison between the two ideas about polygamy in this contemporary era. Then, this study aimed to analyze the comparative law of polygamy according to the Double Movement theory and the *nazariyyat al-ḥudūd* theory.

Method

This research was normative legal research,¹⁵ using the approach of ushul fiqh¹⁶ approach and comparative law.¹⁷ Data is collected from primary, secondary, and tertiary

⁸“You will never be able to maintain ‘emotional’ justice between your wives—no matter how keen you are. So do not totally incline towards one leaving the other in suspense.1 And if you do what is right and are mindful ‘of Allah’, surely Allah is All-Forgiving, Most Merciful.”

⁹N. Nafisatur Rofiah, “Poligami Perspektif Teori Double Movement Fazlur Rahman,” *Mukaddimah* 4, no. 1 (2020): 1–7, <https://doi.org/10.30743/mkd.v4i1.930>.

¹⁰Zunly Nadia, “Membaca Ayat Poligami Bersama Fazlur Rahman,” *Mukaddimah: Jurnal Studi Islam* 2, no. 2 (2017): 203–228, <https://ejournal.uin-suka.ac.id/pusat/mukaddimah/article/view/1369>.

¹¹Fahmi Ulyati, “Pemikiran Fazlur Rahman Dalam Q.S. An-Nisâ [4]: 3 Tentang Poligami,” *Syariat* 3, no. 1 (2017): 15–24, <https://doi.org/10.32699/syariat.v3i01.1139>.

¹²Muhammad Husnul, “Revitalisasi Teori Limit Muhammad Syahrur Terhadap Ta’addudu Al-Zaujât,” *Takammul* 11, no. 1 (2022): 23–43.

¹³Yassirly Amrona Rosyada, “Poligami Dan Keadilan Dalam Pandangan Muhammad Syahrur: Studi Rekonstruksi Pemikiran,” *Profetika: Jurnal Studi Islam* 18, no. 2 (2017): 164–75.

¹⁴Mushlihin, “Poligami Dalam Pandangan Muhammad Syahrur,” *Al-Bayyinah* 2, no. 1 (2018): 125–42, <https://doi.org/10.35673/al-bayyinah.v2i1.44>.

¹⁵Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram Press, 2020); Nicho Hadi Wijaya, “The Challenges of Sharia Pawnshops in Indonesia in The Era of The Industrial Revolution 4.0,” *El-Mashlahah* 12, no. 1 (2022): 52–69, <https://doi.org/10.23971/elma.v12i1.3910>.

¹⁶Muhammad Ali Asy-Syaukani, *Irsyad Al-Fuhul Fi Tahqiq Al-Haqq Min ‘Ilm Al-Ushul* (Beirut: Darul Kutub Ilmiah, 1994); Ibnu Elmi A.S Pelu, “Kedudukan Fatwa Dalam Konstruksi Hukum Islam,” *El-Mashlahah* 9, no. 2 (2019): 167–81, <http://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/article/view/1294>.

legal sources. Then, it was further analyzed using Fazlur Rahman's double movement theory and Muhammad Syahrur's theory of *Nazariyyat al-ḥudūd*.

Findings and Discussion

Biography of Fazlur Rahman

Fazlur Rahman was born on Sunday, September 21, 1919, in an area called Hazara, located in Northwest Pakistan.¹⁸ A place that has birthed many reliable thinkers, such as Shah Waliullah al-Dahlawi, Sayyid Khan, and M. Iqbal. This situation was also inherited by Fazlur Rahman as a free thinker, critical, and neo-modernist. The social situation of the people when Rahman was born was colored by the occurrence of public debate between the three conflicting groups; modernist, traditionalist, and fundamentalist groups. They claim the truth of their respective opinions. This debate rose when Pakistan was declared and separated from India and became a sovereign and independent country on August 14, 1947.

Among the ideas and thoughts being debated by the three conflicting groups is the form of the State of Pakistan after its independence from India. The modernist group formulates the concept of Islamic statehood within the frame of modern ideological terms. The traditionalist group proposes a state concept in the frame of traditional Islamic political theories (caliph and Imamah). Meanwhile, the fundamentalist group proposes a state concept of "God's kingdom."¹⁹ This debate continues to produce a constitution with amendments. Amid this social phenomenon, Rahman later put forward his neo-modernist ideas.

Rahman was born and raised in a family that is very concerned about education. His father, Maulana Syihab al-Din, was a traditional scholar who adhered to the Hanafi school of thought, a Sunni school of thought that was seen as more rational than other schools of thought (Maliki, Shafi'i, and Hanbali). Even though Shihab al-Din was a traditionalist, he was not like most of the scholars of his time who opposed and considered modern education to poison faith and morals. He assumes, Islam must face the reality of modern life, not only as a challenge but also as an opportunity.²⁰ This

¹⁷Sudarti, "Perbandingan Hukum Pidana Perzinaan Di Malaysia Dan Brunei Darussalam," *El-Mashlahah* 11, no. 1 (2021): 78–96, <https://doi.org/10.23971/elma.v11i1.2643>.

¹⁸Fazlur Rahman, *Gelombang Perubahan Dalam Islam* (Jakarta: RajaGrafindo Persada, 2001).

¹⁹Sibawaihi, *Hermeneutika Al-Qur'an Fazlur Rahman* (Yogyakarta: Jalasutra, 2007).

²⁰Fazlur Rahman, "An Autobiographical Note," *Journal of Islamic Research* 4, no. 4 (1990): 227–

father's belief made Fazlur Rahman's thoughts seen from the attitude that was not want to be trapped in narrow traditionalist thoughts and the traditions of the schools of thought.

Rahman's educational career started with his family, namely in the field of traditional educational discourse which was directly guided by his father. This educational discourse usually begins with memorizing the verses of the Koran, besides studying Arabic, Persian, rhetoric, logic literature, philosophy, kalam, fiqh, hadith, and interpretation. When he was 14 years old, Rahman began to experience modern education in Lahore in 1933. He also continued to study with his father at the same time. He gained his bachelor's at Punjab University majoring in Arabic literature with a BA degree in 1940. Two years later, he gained a master's degree in the eastern department at the same university in 1942.²¹

Seeing the slow and low quality of education in India at that time, Rahman decided to continue studying in England. Rahman's decision to study in England - by looking at the social setting of society at that time- was considered very brave because people who studied in the West were assumed to already be influenced by the Western system which was contrary to Islam's "infidel". If successful in graduation, it will be difficult to be accepted in society. They sometimes experience oppression. This community's opinion did not prevent Rahman from continuing his studies in a country that was claimed to be "infidel" by traditionalist and fundamentalist groups.

In 1946, he took his doctoral degree at Oxford University. He studied the Psychology of Ibn Sina as his dissertation under the guidance of professor Simon Van Den Berg. During his studies, Rahman had the opportunity to learn many languages, such as English, Latin Greek, French, German, Turkish, Urdu, Arabic, and Persian.²² After completing his education at Oxford, Rahman did not return to Pakistan, he chose to teach Persian and Islamic philosophy at Durham University in England from 1950-1958. After that, Rahman moved to McGill University Canada to become an associate professor in the field of Islamic studies. However, when the reign of Pakistan came

²¹Abdul Mustaqim, *Studi Al-Qur'an Kontemporer: Wacana Baru Berbagai Metodologi Tafsir* (Yogyakarta: Tiara Wacana, 2002).

²²Sibawaihi, *Hermeneutika Al-Qur'an Fazlur Rahman*.

under the hands of the modern-minded Ayyub Khan, Rahman was called upon to rid his country of sect shackles by abandoning his academic career.

From 1961-1968, Rahman was appointed as the director of the central Islamic Research Institute for a period. He also held the position of Member of the Advisory Council for Islamic Ideology. During this time, Rahman was noted to have initiated the publication of the Journal of Islamic Studies as a forum for accommodating his brilliant ideas and thoughts.²³ As he has trust in several positions, Rahman takes it as a golden opportunity to introduce ideas by reinterpreting Islam to answer the challenges of that time to Muslims in Pakistan in particular. Of course, Rahman's brilliant ideas were met with very strong challenges from traditionalist and fundamentalist groups in Pakistan. The climax arise when the first two chapters of his book, Islam, were translated into Urdu and published in the journal Fikr-u-Nazr. The central problem is the nature of the revelation of the Qur'an. Rahman writes that the Qur'an as a whole is the word of Allah and is also entirely the word of Muhammad in the ordinary sense.²⁴

This phenomenon forced Rahman to leave his homeland. He sees that his country is not ready to provide a free and responsible academic environment. In 1970, Rahman left for Chicago. There, he was named a professor in the field of Islamic thought at the University of Chicago. This university is the place where he spawned many of his works. This place was also his final stopover, until his death on July 26, 1988. During his last 18 years, he was often asked to give lectures at other universities apart from teaching at the University of Chicago. He became the first Muslim to receive the *Giorgio Levi Della Vida Medal*, which symbolizes the pinnacle of achievement in the field of Islamic civilization studies from the Gustave E. Von Grunebaum Center for Near Eastern Studies at UCLA.

The works of Fazlur Rahman are Avicenna's Psychology (1952), Prophecy in Islamic Philosophy and orthodoxy (1958), Islamic Methodology in History (1965), The Philosophy of Mulashadra (1975), Major Themes of The Qur'an (1980), Islam and

²³Taufik Adnan Amal, *Islam Dan Tantangan Modernitas: Studi Atas Pemikiran Hukum Fazlurrahman* (Bandung: Mizan, 1996).

²⁴Amal.

Modernity Transformative of on Intellectual Tradition (1982), and Revival and Reform in Islam (2000).²⁵

Fazlur Rahman's Double Movement Theory

The method of interpretation of the double movement is one of the applications of interpretation theory in the interpretation of the Qur'an which was formulated by Fazlur Rahman. He builds his method of interpretation on the theoretical concepts that the things to seek and apply to the Qur'an amid human life are not only its literal meaning content but also the worldview conception (*weltanschauung*).

Rahman, in this perspective, explicitly distinguishes between the specific legal of the Qur'an which rises to rules, norms, and laws resulting from the literal meaning of the Qur'an, and the moral ideals, namely the basic ideas of the Qur'an which were revealed as a mercy to nature and promotes the values of justice (*'adalah*), brotherhood (*ukhuwwah*), and equality (*musawah*). According to Rahman, understanding the contents of the Qur'an must prioritize moral values or ethical vision. Moral values in Islam must stand firmly based on the moral ideals of the Qur'an.

Rahman emphasized the upholding of this morality because he saw the reality around him at that time as a loss of this basic vision due to the intervention of social, economic, and political interests throughout Islamic history. As a result, there were various fragmentations of the people which led to conflicts and fights. An example of a case where morality is lost by various interests in Pakistan is the incident of agitation of the Qadian Ahmadiyya community with the Kwaja Nazib al-Din government. The incident is supported by the majority of the clergy which lead to a bloody incident. Of this incident, Islam seems to teach its adherents to commit violence, not democracy, freedom, equality, tolerance, social justice, and so on.²⁶

To the previous mufassir, Rahman expressed his criticism of their patterns and methods in interpreting the Qur'an. He assumed in discussing the Quran, most of the Muslim writers took and explain verse by verse. Although almost all of the writing was done to defend a particular point of view, the writing procedure itself could not convey a cohesive view of the Qur'an on the universe and life.

²⁵Fatah Rosihan Affandi, *Pemikiran Fazlur Rahman Tentang Manusia* (Semarang: IAIN Walisongo, 2002).

²⁶Fazlur Rahman, *Islam Dan Modernitas: Tentang Transformasi Intelektual* (Bandung: Pustaka, 1995).

Departing from the criticism that he raised, he then answered himself by offering a method of interpreting the Quran with an ethical vision, by prioritizing the *weltanschauung* al-Qur'an. With this method, he is very interested in building awareness in the Islamic world for its historical responsibility with a solid moral foundation referring to the Quran as the most perfect source of moral teachings that must be understood as complete and coherent. This complete and coherent understanding must be done through a method that can be accounted for religiously and scientifically. According to Rahman, without an accurate and correct method, an understanding of the Qur'an may be misleading, especially when learning in a partial and atomistic way. The method is known as the double movement method of interpretation.

Operational Theory of Double Movement

The double movement interpretation mechanism proposed by Fazlur Rahman in interpreting the Qur'an is divided into two movements. The first movement, this process or method consists of two steps. The first step, when an interpreter will solve problems that arise from the current situation, the interpreter should understand the meaning of a verse by studying historical situations or problems where the verse of the Quran is the answer. Of course, before examining the specific verses in their specific situations boundaries, a study of the macro situation within the boundaries of society, religion and customs, institutions, even regarding life in Arabia without ruling out the ward of Persian-Byzantium.

The second step is to generalize those specific answers and state them as statements that have general moral-social goals, which are filtered from these specific verses in the boundaries of the historical and rational-legislative backgrounds that are often stated. In this process, attention must be led to the teachings of the Qur'an as a complete so that every particular meaning is understood, every law stated, and every goal formulated is coherent with the others as the teachings of the Qur'an contain no contradictions but are coherent, cohesive, and consistent.

The second movement is the general teachings are embodied in a concrete socio-historical context at present. Again, this movement requires a careful study of the current situation and an analysis of its various component elements so that we can

assess the current situation and change the current conditions as needed and determine new priorities to implement the values of the Quran in a new way.²⁷

Thus, the methodology introduced by Rahman is a method of thinking that is reflective, moving back and forth between deduction and induction reciprocally. This kind of methodology will bring the implication that there is nothing eternal in the meaning of God's law as it is understood by humans. There are only moral principles that exist and are eternal. Thus, the law of cutting hands, for example, is only a model of punishment that is deduced from moral principles, as well as other laws, such as the one hundred times binding punishment for adulterers *ghair muhsan* (not married), and so on.

If Rahman's theory of double movement is examined, it seems that he is trying to dialectic text, author, and reader. As an author, Rahman does not force the text to speak according to the author's wishes, but rather allows the text to speak for itself. Rahman examines the historicity of the text to invite the text to speak. Here, historicity means *asbab al-nuzul* as understood by conventional scholars, namely the event or reason for the Qur'an to be revealed. But, he defines it broader, that is the social setting of Arab society where the Qur'an was revealed or more precisely called *qira'ah ta'rikhiyyah*.

The purpose of examining the history of texts is to look for universal values. Rahman's language calls them moral ideals because moral ideals apply throughout time and do not change. In this case, Rahman distinguishes between moral ideals and specific legal. The moral ideal is the basic moral goal ordered by the Qur'an. Meanwhile, specific legal provisions apply specifically. Moral ideals are more applicable than specific legal provisions. Because moral ideals are universal. The Qur'an is seen as elastic and flexible. While specific legal is more particular.

Besides that, according to Birt as quoted by Abd A'la, Rahman's historicism consists of three interconnected stages. First, an understanding of the historical process in which Islam took the shape. Second, an analysis of the process to distinguish its essential principles from the particular formations of Muslims as a result of their

²⁷Rahman.

specific needs. Third, consideration of the best way to apply these essential principles.²⁸

In the process of applying moral ideas as an author, Rahman also considers the presence of readers who are covered by various regulations and backgrounds, such as the application of the law of cutting hands. Here, Rahman also considers human values aiming not to conflict with human rights. Likewise, with the laws on polygamy and inheritance, Rahman's considerations in these two laws are the values of feminism. So Rahman considers the readers as an author to be not only local readers but international (world citizenship). This is where the double movement theory is categorized as a hermeneutic method that does not dominate one element, but there is a balance between the three elements, namely text, author, and reader.²⁹

Biography of Muhammad Syahrur

Muhammad Syahrur was born on April 11, 1938, in Damascus, Syria. His father's name was Diyb bin Diyb Syahrur, and his mother was named Siddiqah bint Salih Filyun.³⁰ Syria or in history better known as Sham is one of the centers of world civilization. History records that the term Sham is taken from one of the sons of Prophet Noah named Sam. The name Sam in Syriac is called Sham, and in Hebrew called Shim. Another tradition explains that the word Sham denotes something that is on the left side of the earth, while Yaman means something that is on the right side of the earth. In the past, Sham was part of the land of the Israelites.³¹ Mukar Damascus was founded by Damasqas, a slave of Iskandar (Dzukarnain).³²

Sham in Pre-Islamic is known as the center of various sects of belief. Various civilizations attempt to conquer Sham, including; civilizations of Ancient Egypt, Greece, Rome, Arabia, and so on. Sham became one of the centers of Greek philosophical civilization. The philosophy developed by the Syriac people. They translated all the Greek works like medicine, physics, mantic, mathematics, and philosophy into Syriac. When the Romans ruled Sham, the translation of Greek works

²⁸Abd A'la, *Dari Neomodernisme Ke Islam Liberal* (Jakarta: Paramadina, 2003).

²⁹Sibawaihi, *Hermeneutika Al-Qur'an Fazlur Rahman*.

³⁰Muhammad Syahrur, *Al-Kitab Wa Al-Qur'an Qira'ah Mu'asirah* (Cairo: Sina li al-Nashr wa al-Ahali, 1992).

³¹Muhammad bin Mukarram, *Mukhtasar Tarikh Damashq Li Ibn 'Asakir* (Damaskus: Dar al-Fikr, 1984).

³²Mukarram.

began to be limited, especially those dealing with religious issues. Then, Philosophical works are adapted to the beliefs of those who adhere to Christianity.³³

The Roman civilization was considered the last to occupy and rule over the Sham. The majority of the local population embraced Christianity by making Roman civilization a part of their culture and civilization. This practice continued until Islam came to Sham in the 7th century.³⁴ Islam gave residents the freedom to embrace religion and develop their scientific civilization. Schools or madrasas used by the Syrian people were allowed to remain open and stand independently without any intervention from the government. This freedom continues to be guaranteed as long as it does not interfere with the conflict over religion. The presence of Islam in Sham has an impact on changes in everyday language. The Syriac language, which was the language of the local population, was gradually eroded by Arabic. The presence of the Syriaes played an important role in translating Syriac's works into Arabic.³⁵

Indirectly, the long history of the Sham civilization builds the mentality and mindset of its people. Scientific culture is the spirit for the growth of the Sham race. This culture and civilization surround and shape Muhammad Sharur. Sharur started his formal education at Madrasah al-Kawakibi, located in Damascus. He completed ibtidaiyah (elementary school), i'dadiyah (junior high school), and tsanawiyah (high school level) education at the same Madrasah. Sharur obtained his tsanawiyah diploma in 1957.³⁶

One year later, in March 1958, Syahrur headed to Moscow, the Soviet Union, to continue his education. Syahrur was a student in the Civil Engineering program at Moscow University on a scholarship from the Syrian state. Five years later, in 1964, Syahrur obtained a diploma. Then, he returned to Damascus. And he became an adjunct lecturer at the University of Damascus in 1965.³⁷

In 1967, Syahrur had the opportunity to do research at Imperial College London, England. But in June, of the same year, Syahrur had to leave London and return to Syria because there was a war between Syria and Israel, which had an impact on

³³Ahmad Amien, *Fajr Al-Islam* (Cairo: Kalimat 'Arabiah li al-Tarjamah wa al-Nashr, 2011).

³⁴Amien.

³⁵Amien.

³⁶Syahrur, *Al-Kitab Wa Al-Qur'an Qira'ah Mu'asirah*.

³⁷Syahrur.

diplomatic relations between Syria and London.³⁸ In 1968, Syahrur received a scholarship from the University of Damascus to continue his Master's and Doctoral programs at Ireland National University. He took the Land and Building Mechanics program. With his persistence, he finally obtained a Master's degree in 1969 and a Doctorate in 1972 at the same university. In the same year, Syahrur decided to return to Damascus and teach at the University of Damascus in the courses that he took while in Ireland.

In 1982-1983, Syahrur received an assignment from the University of Damascus to become a Saudi Consult expert staff in Saudi Arabia. In 1982, he also opened a technical consulting institute in Damascus with his fellow students. Besides Arabic, Syahrur also spoke English and Russian.³⁹

Formally, Syahrur's intellectual career only touched on engineering. Syahrur's interest in the science of the Qur'an begins with his friendship with Ja'far Dakk al-Bab. The friendship began in Moscow when Syahrur was taking Masters's and Doctoral programs in Engineering, while his friend majored in Linguistics. Then, the two separated after finishing their education level.

In 1980, Syahrur met with Ja'far Dakk al-Bab at an event. At that time, Syahrur experienced extraordinary problems in solving linguistic, philosophical, and understanding problems of the Qur'an. Ja'far Dakk al-Bab tried to help to solve Syahrur's confusion. The effort made by Ja'far Dakk al-Bab was to provide a treatise on his dissertation while in Moscow. The dissertation discusses the theory of language from the perspective of Abdu al-Qahir al-Jurjani. It was strengthened by the theory of the approach of al-Farra', Abi 'Ali al-Farisi, and Ibn Jinni. Ja'far Dakk al-Bab's dissertation and explanation made Syahrur understand that 'words or lafadz always follow meaning', and Arabic does not recognize synonymous but each word has a different meaning.⁴⁰

From that meeting, Syahrur became more active in studying the grammar of the Qur'an to produce a monumental and controversial text. The work entitled 'al-Kitab wa al-Qur'an Qira'ah Mu'asirah.' The work took approximately 20 years, from 1970 to

³⁸Abdul Mustaqim, *Epistemologi Tafsir Kontemporer* (Yogyakarta: LkiS, 2010).

³⁹Syahrur, *Al-Kitab Wa Al-Qur'an Qira'ah Mu'asirah*.

⁴⁰Syahrur.

1990.⁴¹ Apart from these monumental works, Syahrur also has several works, including; *Dirasah Islamiyyah Mu'asirah fi al-Daulah wa al-Mujtama'* (1994), *Al-Islam wa al-Iman*; *Manzumah al-Qiyam I* (1996), *Masyru' al-Amal al-Islam* (1999), *Handasah al-Asasat* (Foundation science), and *Handasah al-Turab* (Geology).⁴²

Muhammad Syahrur and Nazariyyat al-ḥudūd (Boundary Theory)

The word *hudud* is a term in Islamic jurisprudence that is closely related to the issue of Islamic Criminal Law (*Jinayah*). Literally, *ḥudūd* means boundary. Then, this term is used as a name to legitimize his theory with the term *nazariyyat al-ḥudūd* (boundary theory). This theory was developed by Syahrur as an effort to systematize two verses that clearly seem to have the same meaning but are essentially different. To contextualize Islamic law aiming it relevant to the times, Syahrur provides several conditions for contemporary Islamic law, including:

- a. There must be the belief that the pronunciations in Arabic are not synonymous. All pronunciations have different meanings even though they sound the same. And all pronunciations cannot be understood without going through a process of reasoning or logic.
- b. Involving a scientific role that develops in each place before determining a law
- c. Involving legal, economic, and social considerations in deciding cases
- d. Involving the role of experts from various social sciences such as doctors, engineers, physicists, chemists and so on
- e. Based on the analogy of reality with other realities.
- f. If there is a change, then it is possible to review the legal ruling
- g. Not only refer to the hadith (although it is Sahih), the results of the ijtiḥad of previous scholars are absolute
- h. Must believe that the main element of Islamic law is freedom.⁴³

Syahrur took an example regarding the limitations of legal provisions in fiqh. At least, there are several legal provisions in the form of amputation (cutting hands), capital punishment (death penalty), and flogging. All of these types of punishment are believed to be a solution to existing violations. For those who steal, the law of cutting

⁴¹Syahrur.

⁴²A. Khudori Solch, *Pemikiran Islam Kontemporer* (Yogyakarta: Penerbit Jendela, 2003).

⁴³Syahrur, *Al-Kitab Wa Al-Qur'an Qira'ah Mu'asirah*.

hands is the reward. Those who kill are killed, and those who commit adultery are whipped or stoned. All of these legal boundaries are believed to be from Allah SWT.

Syahrur quoted the story of the prophet Yusuf who was sentenced to prison because he was accused of making a mistake. Prison laws are not established as a legal boundary that comes from God as it is not absolute. It was as if this boundary was left open so that each legal expert could determine the form of punishment for the guilty. On the other hand, imprisonment is an insult to the dignity of humans who naturally have freedom.

Of these two things, Syahrur interpreted that the death penalty and the cutting of hands were the highest boundaries of the law. These boundaries are only enforced in certain situations and conditions because have a tremendous social impact. The flogging punishment seems to be lighter than a prison sentence as prison has limited the freedom that is human nature.⁴⁴

There are at least six boundary theories developed by Syahrur. They are minimum boundaries, maximum boundaries, minimum and maximum boundaries at once, minimum and maximum boundaries at the same time but in one coordinate point, maximum boundaries with one point that tends to approach a straight line but does not touch, maximum boundaries positive boundaries that cannot be exceeded, and the minimum negative boundaries that can be exceeded. The six boundary theories are presented in the following table:⁴⁵

Table 1. The theory of *Nazariyyat al-Hudūd* Muhammad Syahrur

No	Model	Description	Legal Base	Explanation	Related Cases
1	Minimum Boundary	The minimum boundary determined by the Qur'an. Ijtihad conducted by the human is not possible to reduce these minimum provisions but it is possible to add them.	The verses of Al-Nisa' verses 22-23, on women who are forbidden to marry.	The provision in the verses of Al-Nisa' is a minimum boundary. It is not possible to reduce these minimum provisions but it is possible to add them. For example, the results of medical research found that marrying an uncle/aunt's daughter can have bad consequences for offspring. Accompanied by adequate statistical data, then	The cases of forbidden foods (Sura al-Māidah: 3) and women's clothing (al-Nur: 31)

⁴⁴Syahrur.

⁴⁵Soleh, *Pemikiran Islam Kontemporer*.

religion can forbid.

2	Maximum Boundary	The maximum boundary set by the Qur'an cannot be exceeded, but it is possible to reduce	The punishment of cutting the hands of the thieves (al-Maidah: 38)	The punishment for thieves cannot be made worse than cutting hands, but ijtiḥad allows giving relief according to conditions.	Death penalty for murderers (al-Isra': 33)
3	The maximum and minimum boundary	The maximum and minimum boundaries have been set, and ijtiḥad is between them	Inheritance (al-Nisā': 11)	The maximum boundary for men is twice that of women. The minimum boundary of women is half (½) that of men. Ijtiḥad moves between the two boundaries (had), considering the circumstances and involvement of the role of women	
4	The maximum and minimum boundary are at the same point.	The provisions for the maximum boundary become the minimum boundary so that ijtiḥad is not possible to take a heavier or lighter law.	Perzinaan (an-Nur: 2) Fornication (an-Nur: 2)	The punishment of fornication in al-Qur'an is maximum and minimum boundary because that verse contains the word ' <i>ra'fah</i> ' which means 'no relief'. The ijtiḥad room only applies to witnesses, not punishment.	
5	The maximum boundary with one point approaching a straight line without	The maximum boundary has been determined by the Qur'an. But, the law cannot be applied because there is no touch with the minimum boundary.	The relationship between men and women	The maximum boundary is adultery or fornication, but if a man and a woman have a relationship that is not within the limits of adultery, then the law of adultery cannot be applied	

	touching		
6	The positive maximum boundary may not be exceeded and the negative minimum boundary may be exceeded.	The maximum boundary that may be set cannot be exceeded while the negative minimum boundary can be exceeded.	Use of The maximum boundary assets or wealth. The maximum boundary that may not be exceeded is usury (<i>riba</i>), and the minimum boundary that may be exceeded is <i>zakat</i> (<i>zakat</i> as a boundary negative because it is the minimum boundary of assets that must be issued). And, <i>Zakat</i> can be exceeded by alms (<i>sedekah</i> or charity). In this case, there is permissible usury, namely usury that does not exceed the <i>had</i> (buying and selling).

Comparison between Double Movement Theory and *Nazariyyat Al-Ḥudūd* Theory on Polygamy Laws

Apart from the crimes of theft and murder, the theory of *Nazariyyat al-ḥudūd* can also be applied to cases of polygamy. Syahrur uses this boundary theory as an approach to interpreting polygamy verses.

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْبَيْتِمْسَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِثْلَىٰ مَا نَكَحْتُمْ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَذَىٰ أَلَّا تَعُولُوا

If you fear you might fail to give orphan women their 'due' rights 'if you were to marry them', then marry other women of your choice—two, three, or four. But if you are afraid you will fail to maintain justice, then 'content yourselves with' one or those 'bondwomen' in your possession. This way you are less likely to commit injustice."⁴⁶

Syahrur interprets the verse as a continuation of the two previous verses. The first verse of surah al-Nisa' contains an order to fear Allah SWT and establish friendship between fellow human beings in general without any barriers. The second verse talks about compensation for orphans and the prohibition on enjoying their wealth. Then the third verse talks about the procedures for sponsoring orphans and widows. The procedure is in the form of marrying them. These three verses have a series of units that are often forgotten. The impact of the absence of coherency in the three verses is in the form of a suggestion of polygamy which is purely biological needs fulfillment. Syahrur believes, the most important purpose of polygamy is to look

⁴⁶Departemen Agama RI, *Al-Qur'an Terjemah* (Depok: al-Huda Kelompok Gema Insani, 2005).

after, care for and support orphans and widows. Also, he believes Polygamy is a recommendation that is *daruri*.

For polygamy practice, Syahrur provides several conditions that must be met. First, quantitative requirements. This requirement is a limit on the number of women who may be polygamous. Syahrur argues the lowest boundary for the number of women in polygamy is one, and the highest or most is four. The two and three are part of polygamy's steps toward the highest boundary. Basically, the lowest boundary in marriage is one. This statement is emphasized in His words '*fa in khiftum alla ta'dilu*'. The two, three, or four are due to an emergency.

Second, qualitative requirements. This requirement is a form of the quality of people who are polygamous and those who are polygamous. The condition for a polygamous person is to cause worry in himself about his inability to do justice. However, he will continue to strive to be fair. Someone who wants to be polygamous must determine whether the woman is still a virgin or a widow. If a widow, what caused her widowhood, was it because her husband died or divorced her?

Considering the verse, polygamous women are those who have orphans. The Qur'an uses the word *qasata* as a sign that, here, the fair conditions are in the form of nurturing, guarding, educating, and raising orphans. When a man marries two, three, or four widows who all have children, this indirectly increases the burden and responsibility of the men toward their children. This is the reason why the Qur'an uses the word '*adala*'. If a man is unable to bear the burden of an increasingly large and larger family, he should marry only one.

Syahrur emphasized the fair attitude in the verse is only for a man to orphans from his polygamous wives. As for being fair to his wives, it is not obligatory because men will never be able to be fair, as explained in the verse of al-Nisa : 129.⁴⁷

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ ۖ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ ۗ وَإِنْ تُصْلِحُوا
وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ عَفُورًا رَحِيمًا

You will never be able to maintain 'emotional' justice between your wives—no matter how keen you are. So do not totally incline towards one leaving the other

⁴⁷Syahrur, *Al-Kitab Wa Al-Qur'an Qira'ah Mu'asirah*.

in suspense.¹ And if you do what is right and are mindful 'of Allah', surely Allah is All-Forgiving, Most Merciful.⁴⁸

In contrast to the previous interpretation, Fazlur Rahman with his double movement theory explains that verse 3 of surah al-Nisa' was revealed as a response to the behavior of the trustees of orphans, both female and male, who often misappropriate their assets.⁴⁹ Then, the Qur'an calls on them (the trustees) not to misappropriate the wealth, and they may marry (orphan women) up to four of them, provided they can act fairly. This call is also supported by Q.S al-Nisa': 127.

وَيَسْتَفْتُونَكَ فِي النِّسَاءِ ۗ قُلِ اللَّهُ يُفْتِيكُمْ فِيهِنَّ وَمَا يُتْلَىٰ عَلَيْكُمْ فِي الْكِتَابِ فِي يَتِمَّى النِّسَاءِ الَّتِي لَا تُوْثِقُهُنَّ
مَا كُتِبَ لَهُنَّ وَتَرْغَبُونَ أَن تَنْكِحُوهُنَّ وَالْمُسْتَضْعَفِينَ مِنَ الْوِلْدَانِ وَأَن تَقُومُوا لِلْيَتَامَىٰ بِالْقِسْطِ ۗ وَمَا تَفْعَلُوا مِنْ
خَيْرٍ فَإِنَّ اللَّهَ كَانَ بِهِ عَلِيمًا

“They ask you 'O Prophet' regarding women. Say, “It is Allah Who instructs you regarding them. Instruction has 'already' been revealed in the Book concerning the orphan women you deprive of their due rights but still wish to marry, also helpless children, as well as standing up for orphans' rights. And whatever good you do is certainly well known to Allah.”⁵⁰

The statement, by looking at the *asbab al-nuzul*, shows that this problem arises in the context of orphaned women. Then, the Qur'an warns that "no matter how they (the trustee) try (want to marry up to four), you, Allah said, will not be able to do fair to these women.⁵¹

Rahman does not agree that fair means equality in outward treatment, such as giving a living, as understood by classical scholars. For Rahman, if the clause has that meaning, then the Quran can not say that a husband cannot be fair to his wife, even though he wants to do. Rahman, highlight this case and states that being fair is interpreted in terms of love, which is supported by other verses, such as al-Rum verse 21 and al-Baqarah verse 187 which clearly shows that husband and wife relationship should be according to the Qur'an, that based on love and compassion. Therefore, when the Qur'an says that it is impossible to be fair between wives, then the holy book clearly

⁴⁸RI, *Al-Qur'an Terjemah*.

⁴⁹Abdul Fattah Abdul Ghani Al-Qadhi, *Asbab Al-Nuzul 'an Al-Shahabah Wa Al-Mufassirin* (Cairo: Dar al-Salam, 2005).

⁵⁰RI, *Al-Qur'an Terjemah*.

⁵¹Al-Qur'an, 4: 129.

states that it is impossible to love more than one wife or woman in the same amount of love.⁵²

In this case, the clause regarding fair dealing must receive attention and be determined to have more fundamental importance than the specific clause permitting polygamy. The demand to be fair is one of the basic demands of the entire teaching of the Quran. For Rahman, the Qur'an wishes this matter to maximize the happiness of husband and wife. And, a monogamous marriage is ideal to achieve for this purpose. However, in historical reality, this moral goal had to compromise with the actual conditions of Arab society in the 17th century AD, where polygamy was deeply rooted and firmly rooted so that legally it could not be removed immediately because it might destroy the moral goal itself.

Conclusion

The issue of polygamy is an issue that is always hot and interesting for discussion because the practice of polygamy has long existed, is deeply rooted, and is often practiced in society. Based on the word of Allah, in al-Nisa's verse 3, the scholars understand in general the permissibility of polygamy. However, the permissibility of polygamy is still conditional, and that must be able to act fairly. The meaning of being fair is a part that is being debated by scholars including Fazlur Rahman and Muhammad Syahrur. Rahman with his double movement theory argues that no one can do justice in matters of love as emphasized by verse 129 of surah al-Nisa'. He stressed that the verse's *maqoshid* leads to the principle of monogamy, not polygamy. Meanwhile, Syahrur understands fairness in a person's ability to be fair not only in terms of giving charity to widows but also to orphans of widowed women who are polygamous, including in terms of looking after, nurturing, and raising them.

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⁵²Amal, *Islam Dan Tantangan Modernitas: Studi Atas Pemikiran Hukum Fazlurrahman*.

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