International Journal of Education, Vocational and Social Science
https://e-journal.citakonsulindo.or.id/index.php/IJEVSS
E-ISSN : 2963 4954
IJEVSS

The Socio-Anthropological Dimension of the Prophet Muhammad's Polygamy and the Dynamics of Its Practice and Regulation in Indonesia

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Abstract

Monogamy is the foundational principle of Islamic marriage, whereas polygamy serves merely as a strictly conditioned legal exception (rukhṣah). However, allegations surrounding prophetic polygamy (khuṣūṣiyyah) and the growing judicial tendency to grant polygamy petitions based on extra-legal grounds in Indonesia pose significant conceptual and legal challenges. This study aims to interconnect the socio-anthropological interpretation of prophetic khuṣūṣiyyah with shifts in judicial reasoning (law in action) within Religious Courts. Employing a qualitative socio-legal approach, this research combines library research with normative-empirical legal analysis, examining Sīrah Nabawiyyah texts, Indonesian marriage regulations (Law No. 1/1974 and the Compilation of Islamic Law/KHI), and a sample of judicial decisions. The data were analyzed descriptively and qualitatively through content analysis and legal reasoning methods. The findings reveal that Prophet Muhammad's polygamy possessed a profound socio-anthropological dimension, functioning as an instrument for protecting vulnerable groups, fostering social integration, and advancing religious diplomacy, rather than fulfilling biological desires. Meanwhile, at the level of law in action, judges frequently shift their reasoning from formal to substantive rationality, departing from written statutory provisions (contra legem) under Law No. 1/1974 and KHI to approve petitions based on practical and extra-legal grounds, such as workplace relocation separation, economic recovery for widows, and the prevention of social slavery, on the basis of maṣlaḥah. The essence of khuṣūṣiyyah and rukhṣah underscores that judicial discretion in

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accommodating extra-legal reasons must be strictly bounded by the principles of legal certainty and justice, thereby safeguarding the primary principle of monogamy and preventing legal precedents that legitimize arbitrary decision-making.

Keywords: *Khuṣūṣiyyah* , Law in Action, Legal Reasoning, Polygamy, Socio-Legal.

INTRODUCTION

The fundamental principle of Islamic marriage is monogamy, which places the single husband-wife relationship as the ideal household structure. Polygamy is not recommended, but rather a form of legal dispensation (*rukhṣah*) that is casuistic in nature. As an exception, the practice of polygamy is subject to strict conditions to ensure that this permission is not abused into domination or injustice.

From a sociological legal perspective, polygamy is not seen merely as a normative rule or religious doctrine, but as a social phenomenon that interacts dynamically with norms, societal structures, and the effectiveness of positive law. Legal sociology is a discipline that explains why legal practices in social life occur, their causes, influencing factors, background, and so on. Therefore, in the case of polygamy, it is highly restricted and requires court permission and the wife's consent.

Polygamy is often seen as a threat to the stability of the smallest social structure, namely the family, so that the practice of polygamy causes social impacts and structural conflict within the family. The sociology of law highlights that when a legal rule contradicts the customs or cultural/religious understanding of society in the field, the law (the law on polygamy) often loses its binding power. From a sociological perspective, restrictions on polygamy in the Law aim to bring about cultural change (social change) from loose patriarchal customs to more responsible marriage, monogamy as a general principle, and protection of women's human rights.

Wahbah Al Zuhaili explained that monogamy is the most important and dominant system, and is essentially the basic law in Sharia. Polygamy, however, is a rare and exceptional practice that violates the basic law and should not be pursued except in extremely urgent circumstances. Sharia does not require it for anyone, nor does it even encourage it. Sharia only permits it for general reasons, such as gender imbalance, the nation's demographic needs, social and religious interests, or specific reasons, such as infertility or illness of the wife, or incompatibility of

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character.[1]

The Prophet Muhammad (peace be upon him) was granted a legal exception (*khuṣūṣiyyah*) allowing him to have more than four wives. [2]However, this legal exception is often misunderstood, giving rise to stigma and negative accusations. Muhammad's marriage to nine wives was accused of fulfilling his lusts, claiming he was driven by lust and consumed by physical pleasures.[3]

The emergence of these accusations emphasizes the importance of a more in-depth investigation into the background of the Prophet Muhammad's marriage through sociological and anthropological approaches. This paper will analyze the context of polygamy during the prophetic era in order to establish its status as *khuṣūṣiyyah* (private marriage). Furthermore, this article expands the scope of the analysis by linking it to the dynamics of polygamy judicial practices in Indonesia, particularly regarding the shift in judges' reasoning in responding to extralegal reasons amidst the strict objective criteria of the law. Through this investigation, the discussion is expected to provide a conceptual bridge between the meaning of prophetic history and efforts to maintain polygamy restrictions and legal certainty in Indonesia.

Among the researchers who have addressed this issue are Anis and Sulfikar (2025), in their article entitled "The Marriage of the Prophet Muhammad (PBUH) (Historical and Sociological Analysis)." They assert that the Prophet Muhammad's marriage cannot be understood merely as a personal matter, but rather as an integral part of his prophetic mission, which has a strategic function in social transformation, law enforcement, protection of vulnerable groups, and the formation of an inclusive social order. In their view, historical and sociological approaches prove that prophetic polygamy is based on moral-spiritual motives and serves as a means of social cohesion to reconstruct the tribal system (tribalism) towards an Islamic society. Anis and Sulfikar emphasize more on responses to accusations by orientalists, the dialectic of sociological-religious theory, and the internal dynamics of the social order in the early Islamic era (*historical context*).

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[1] Wahbah bin Mustafa Al-Zuhaili, *Al-Fiqh al-Islāmī wa Adillatuh: Al-Shāmil li al-Adillah al-Shar'iyyah wa al-Ārā' al-Madhabiyyah wa Ahimm al-Naẓariyyāt al-Fiqhiyyah wa Taḥqīq al-Aḥādīth al-Nabawiyyah wa Takhrījihā* , 4th edn, vol. 9 (Damascus: Dār al-Fikr, n.d.), 6670–73.

[2] 'Abbas Mahmud al-'Aqqad, *al-Mar'ah fī al-Qur'ān* (Cairo: Mu'assasah Hindāwī li al-Ta'līm wa al-Thaqāfah, 2013), 81.

[3] 'Abd at-Tawwab Haikal, *Ta'addud Az-Zawjāt Fī al-Islām Wa Ḥikmah at-Ta'addud Fī Azwāj an-Nabī Ṣallā Allāh 'Alaih Wa Sallam Wa Daḥḍ Szubuhāt Wa Radd Iftirā'Āt* (Beirut: Dār al-Qalam, 1982), 115.

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[4]Meanwhile, this article also focuses on the anthropological dimension of the Prophet Muhammad's polygamy, and links this historical interpretation with the dynamics of shifting reasoning of judges in responding to extra-legal reasons in the practice of polygamy justice in Indonesia.

On the other hand, Abd Raziq and Faturrahman (2020), in their article entitled "Sociological and Anthropological Approaches to Polygamy," assert that Islam and Law No. 1 of 1974 both place monogamy as the primary principle of marriage, while polygamy only exists as a strictly limited legal exception to maintain family structure and function. In their view, the limitation of a maximum of four wives and strict verification by religious courts serve as protective instruments to prevent social injustice. [5]However, Raziq and Faturrahman place greater emphasis on the sociological aspects of pre-Islamic civilization, cross-religious theological comparisons, arguments for the prohibition of polyandry, and the theoretical impact of domestic dysfunction (*law in books*). Meanwhile, this article focuses on the specific dimension of prophethood (*khuṣūṣiyyah*) from a sociological and anthropological perspective, and examines the practical dynamics of polygamy justice and its legal procedures in Indonesia (*law in action*).

Other researchers who have discussed this issue are Risma Handayani Lubis and Faisar Ananda (2024). In their article, "Polygamy Studies Through a Transdisciplinary Approach (Anthropology, Positive Law, and Philosophy)," they emphasize that studies on polygamy need to be integrated through the *wahdatul 'ulum paradigm* to comprehensively solve social problems in society. In their view, the history of anthropology proves that polygamy existed before Islam, which was then limited to an emergency option. This aligns with the philosophy of *maqasid sharia* and the trend of positive law reform in various Muslim countries to safeguard the welfare of the community. However, Lubis and Ananda emphasize comparative studies of polygamy regulations across countries (such as Malaysia, Brunei, Turkey, and Tunisia) and philosophical-normative reviews at the theoretical level. [6]Meanwhile, this article focuses its study on efforts to bridge the sociological interpretation of the uniqueness of the Prophet's polygamy (*khuṣūṣiyyah*) with the reality of modern justice.

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[4] Muh. Anis and Sulfikar K, 'The Marriage of the Prophet Muhammad SAW (Historical and Sociological Analysis)', *MIMBAR: Journal of Muslim Intellectual Media and Spiritual Guidance* 11, no. 2 (2025), https://journal.uiad.ac.id/index.php/mimbar/index.

[5] Abd Raziq and Faturrahman, 'Sociological and Anthropological Approaches to Polygamy', *Jurnal Tana Mana* 1, no. 2 (December 2020), https://journal.stai-alfurqan.ac.id/tanamana/index.php/jtm/.

[6] Risma Handayani Lubis and Faisar Ananda, 'Polygamy Studies Through a Transdisciplinary Approach (Anthropology, Positive Law, and Philosophy)', *Innovative: Journal of Social Science Research* 4, no. 1 (2024): 4551–65, https://j-innovative.org/index.php/Innovative.

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This article aims to fill an academic gap that has not been fully integrated with previous studies, namely by linking the sociological-anthropological interpretation of the prophetic polygamy's khuṣūṣiyyah and the reality of law in action in religious courts in Indonesia. The novelty of this article lies in its attempt to make the philosophical and sociological values behind the prophetic khuṣūṣiyyah, which emphasizes aspects of social protection, justice, and control over domination, an analytical tool for assessing the discretion and shifts in legal reasoning of judges in modern courts.

Methodology

This research is a qualitative research with a socio-legal approach (*socio-legal research*) that combines historical, socio-anthropological, and normative-empirical legal perspectives. The data used focuses on library research *sourced* from legal materials and relevant literature. Primary materials include texts of *the Prophet's Sīrah* , marriage regulations in Indonesia (Law No. 1 of 1974, Compilation of Islamic Law, and Government Regulation No. 9 of 1975), and several decisions of the Religious Courts as empirical judicial data (*law in action*). Secondary materials include scientific journal articles, books, and relevant previous research results.

Data collection was conducted through an inventory and documentation of Islamic literature, regulatory texts, and copies of judges' decisions. The explored data were then analyzed descriptively and qualitatively using content analysis and legal reasoning methods . This *research* 's analytical framework operationalizes the socio-anthropological values behind *the khuṣūṣiyyah* of prophetic polygamy.

Pre-Islamic Polygamy Practices

Jahiliyyah society permitted polygamy for men and the adoption of as many wives as they desired without any restrictions. The decision to be content with one, two, or more women was a personal matter that depended entirely on the will of the individual. Furthermore, Jahiliyyah customary law also permitted men to own an unlimited number of female slaves. These slaves became the man's full property (*milk al-yamīn*) because he had purchased them, and this ownership status lasted as long as they were under the authority of their master. Therefore, a female slave did not have the rights of a wife and was not categorized as a wife unless her owner freed her and married her. Under such circumstances, her status changed to that of a legitimate wife based on the man's own decision and will.[7]

[7] Jawad Ali, *al-Mufaṣṣal fī Tārīkh al-'Arab Qabl al-Islām* , vol. 10 (Beirut: Dār al-Sāqī, 2001), 219.

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Al-Tabari mentioned that some of the Quraysh used to marry ten women, or even more or less. When they became poor, they would take the property of the orphans under their care to spend on their children or use it to remarry. They were then forbidden to do so and told: "If you fear that you will not be able to deal justly with the property of your orphans because of the pressing need to support your wives, do not exceed the limit of four wives in marriage. If you also fear that you will not be able to deal justly with their property if you marry four wives, limit yourself to one wife only, or to the slaves you own."[8]

One of the provisions established by Islam regarding the principle of polygamy is the limitation of the number of wives to a maximum of four, which is a form of change to the traditions of the Jahiliyyah society. When the command to limit this was revealed, people who had married more than four women were forced to divorce the excess and limit themselves to the legal limit approved by Islam, which is four. It is reported that Ghailan ibn Salamah ash-Ssaqafi had married ten women during the Jahiliyyah period. When he converted to Islam, the Prophet ordered him to divorce the wives who exceeded the limit and to comply with the law stated in the Qur'an. The Prophet also ordered Al-Harith ibn Qais to choose four of his eight wives and divorce the rest. In addition, Mas'ud ibn Mu'attib, Mu'attib ibn 'Amr ibn 'Umair, 'Urwah ibn Mas'ud, Sufyan ibn 'Abdullah, and Abu 'Aqil Mas'ud ibn 'Amir ibn Mu'attib, all from Banu Thaqif, each married ten women. Upon converting to Islam, Ghailan, Sufyan, and Abu 'Aqil each gave up six wives and kept four. Meanwhile, 'Urwah died as a Muslim before being ordered to give up his wives.[9]

Polygamy is one of the sunnahs of the prophets and apostles, while the practice of having slaves during war is nothing new in Islam. The Torah clearly states the permissibility of polygamy and the ownership of slaves without limits on the number. In the Torah it is stated: "If you go out to fight against your enemies, and the Lord your God gives them into your hand and you take them captive, and you see among the captives a beautiful looking woman, so that you feel attracted to her and want to take her as a wife, take her into your house. She must shave her head, cut her nails, take off her prisoner's clothes, and stay in your house crying for her father and mother for a whole month. After that, then you can approach her, marry her, and she will become your wife for you. However, if you don't like him anymore, you have to let him go wherever he likes."[10]

The Torah also mentions that the Prophet Abraham, the father of the prophets, practiced

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[8] Muhammad bin Jarir Al-Tabari, *Jāmi' al-Bayān 'an Ta'Wīl Āy al-Qur'Ān* , vol. 7 (Makkah al-Mukarramah: Dār al-Tarbiyah wa al-Turāṡ, nd), 534–35.

[9] Ali, *al-Mufaṣṣal fī Tārīkh al-'Arab Qabl al-Islām* , 10:220.

[10] Muhammad bin Muhammad Abu Syuhbah, *As-Sīrah an-Nabawiyyah Fī Ḍau' al-Qur'ān Wa as-Sunnah: Dirāsah Muḥarrarah Jama'at Bain Aṣālah al-Qadīm Wa Jiddah al-Ḥadīṡ* , vol. 2 (Beirut: Dār al-Qalam, 1992), 301.

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polygamy. Similarly, Gideon, considered a prophet by the Jews, married many women at once. As for the Prophet David, the Torah mentions that he married seven women, each named individually, then adds that he married many other women and took slaves without limit. Similarly, the Torah contains stories about the extraordinary number of wives and slaves of the Prophet Solomon (peace be upon him). The Torah states: "He—Solomon—had seven hundred wives of noble birth and three hundred slaves."[11]

The Sociological and Anthropological Context of the Prophet Muhammad's Polygamy

Polygamy was not a practice introduced by Islam, but was known and practiced by various societies long before the arrival of Islam. Several historical studies indicate that the practice was initially practiced by kings and the wealthy, even in certain contexts associated with the practice of slavery, concubinage, and the exploitation of women. The tradition of polygamy is found in various civilizations, including ancient India, China, Babylon, Madyan, Syria, Jahiliyyah Arabia, and Jewish society, with various motives and provisions, such as for reasons of descent, social status, and religious legitimacy. In some societies, having multiple wives even became a symbol of social standing and power. The tradition of polygamy was also known in religious circles before Islam; stories in the Mahabharata and Ramayana show the practice in Hindu tradition, while Jewish and Christian traditions also recognize it. In the history of Christianity, the practice of polygamy was even known until it was later restricted with the development of church law influenced by the principle of monogamy in Roman law. Thus, historically, polygamy was a widely known social practice before Islam, generally without the restrictions on the number of wives and the uniform provisions later stipulated in Islam.[12]

The Prophet Muhammad (peace be upon him) married eleven women and died leaving behind nine. Some of them were elderly women, widows, divorced women, and women in frail conditions. Aisha (ra) was his only virgin wife. He set an example of justice and the division of wives' responsibilities. The Prophet (peace be upon him) drew lots among his wives whenever he wanted to travel and divided their time fairly, while maintaining order and respecting the rights of each wife.[13]

The Prophet (peace be upon him) had a special privilege regarding polygamy, allowing him

[11] Ibid., 2:302.

[12] Lubis and Ananda, 'Study of Polygamy Through a Transdisciplinary Approach (Anthropology, Positive Law and Philosophy)', 5–6.

[13] 'Abd al-Malik bin Muhammad Al-Qasim, *Yaum Fī Bait Ar-Rasūl* (Riyadh: Dār al-Qāsim, 1419), 41–42, https://aljam3.com/44547/79832/2.

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to marry more than four wives, while Muslims generally have a maximum limit of four wives. Sociologically, exceptions are commonplace in the process of establishing a social order before a full system transition occurs. Exceptions necessary for the benefit of the new system cannot be generalized. These exceptions are specific and not intended to be repeated, lest they develop into a separate system that stands side by side with the main legal system. This special privilege, which was limited to him, was closely tied to the benefit of the da'wah of his time, given his position as the sole prophet operating in the region where da'wah was first established, namely an area heavily dominated by kinship ties, in-law relationships, and bonds of loyalty between families and tribes.[14]

Regarding the story of the Prophet's marriage to Khadijah, the first thing that can be understood from this marriage is that the Prophet (peace be upon him) did not prioritize physical pleasure and all its associated matters. If he had been as concerned with such matters as other young men his age, he would have chosen a woman younger, or at least not older, than himself. However, it is clear that he desired Khadijah because of her nobility and honor among his people. Even during the pre-Islamic era, she was known as a chaste and self-respecting woman. The marriage lasted until Khadijah's death at the age of 65, while the Prophet (peace be upon him) was approaching 50.[15]

During his marriage, he did not consider marrying another woman or girl. In fact, the age range between 20 and 50 is a time when the urge to have more partners and the tendency to practice polygamy, due to sexual urges in general, begins to strengthen. However, Muhammad (peace be upon him) passed through this age period without, as mentioned, considering taking more partners besides Khadijah, whether a wife or a female slave. Had he so desired, he could have acquired a wife or many female slaves without violating prevailing customs or deviating from the traditions prevalent in society at that time. This further demonstrates that his marriage to Khadijah was not solely motivated by considerations of physical pleasure, especially since he married Khadijah when she was already a widow and nearly his own age.[16]

Marriage of the Prophet Muhammad with Khadijah bint Khuwailid ra contains great wisdom for aiding Islamic da'wah (*nuṣrat al-Islām*), where Khadijah, who chose him on the basis of his honesty and trustworthiness, was present as the first person to believe and the main

[14] al-'Aqqad, *al-Mar'ah fī al-Qur'ān* , 81.
[15] Muhammad Sa'id Ramadan Al-Buti, *Fiqh As-Sīrah an-Nabawiyyah Ma'a Mūjaz Li Tārīkh al-Khilāfah Ar-Rāsyidah* (Damascus: Dār al-Fikr, 2005), 53.
[16] Ibid.

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supporter of the struggle for Allah's message through his wealth, life and position. The polytheists of Makkah only increased the intensity of their harassment against the Messenger of Allah. after Khadijah and Abu Talib died, which became known as an event marking the Year of Sorrow.[17]

One of the Prophet's wives, Sawdah bint Zam'ah, was bereaved by her husband, her uncle's son, after returning from the migration to Abyssinia. After her husband's death, Sawdah had no other refuge than to return to her family, who feared they would force her to convert or marry a man who was not religiously compatible.[18]

Likewise with Hindun bint Umayyah (Ummu Salamah). Her husband, Abu Salamah al-Makhzumi, who was his uncle's son, died as a result of wounds from the Battle of Uhud, leaving her behind, who was already elderly. When he complained about his situation to the Messenger of Allah, he comforted him with a prayer that Allah would replace his misfortune with something better. Even though she had previously rejected Abu Bakar and Umar's proposal, Umm Salamah finally accepted the proposal of Rasulullah saw. after he calmed his heart.[19]

As for other women who married the Prophet Muhammad. came from prominent families and tribes, some of whom even had positions like princesses. Marriage of the Prophet Muhammad they cannot be separated from the social and political conditions that surround them as well as the missionary objectives to be realized. Umm Habibah bint Abu Sufyan, for example, was the daughter of a Quraish leader who had been hostile to Islam for many years. After embracing Islam and emigrating to Habasyah, leaving her family in Mecca, she faced difficult circumstances when her husband died. Marriage of the Prophet Muhammad with it being a form of respect for his faith, sacrifice and steadfastness in defending religion.[20]

Likewise, Safiyyah bint Huyayy, the daughter of a Jewish leader, lost her father, brother and husband in the conflict between her people and the Muslims. Rasulullah saw. freed her from her status as a prisoner, glorified her, and then married her as a form of respect and an effort to restore her honor. Meanwhile, his marriage to Juwairiyah bint al-Haris, daughter of the Bani Mustaliq leader, took place after the defeat of his people in the war. This marriage is a means of glorifying the loser as well as having a wider social impact, because Muslims feel it is inappropriate to treat badly a group that is related to the Prophet Muhammad. Thus, a number of marriages of the Prophet Muhammad. with his wives can not only be understood in terms of personal relationships,

[17] Haikal, *Ta'addud Az-Zawjāt Fī al-Islām Wa Ḥikmah at-Ta'addud Fī Azwāj an-Nabī Ṣallā Allāh 'Alaih Wa Sallam Wa Daḥḍ Szubuhāt Wa Radd Iftirā'Āt* , 129.

[18] al-'Aqqad, *al-Mar'ah fī al-Qur'ān* , 83.

[19] Ibid.

[20] Muhammad Al-Ghazali, *Fiqh As-Sīrah* (Damascus: Dār al-Qalam, 2006), 440.

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but also has lessons in the form of respect for women, restoration of honor, liberation from slavery, strengthening relations between tribes, as well as social benefits and da'wah.[21]

In addition, a number of the Prophet Muhammad's marriages served to strengthen relations with various tribes and groups, build social alliances, reduce hostilities, and pave the way for the acceptance of Islam, as seen in his marriages to Umm Habibah bint Abu Sufyan and Juwayriyah bint al-Harith. Marriages to several widows of companions who died in the struggle, such as Umm Salamah and Zainab bint Khuzaimah, also showed the dimension of protection, giving honor, and guaranteeing a life for the women left behind. In addition, some of the Prophet's marriages had normative and educational dimensions in confirming the provisions of Islamic law while correcting the traditions of pre-Islamic Arab society, such as his marriage to Zainab bint Jahsy which was related to the legal confirmation of the status of adopted children.[22]

In essence, the polygamy practiced by the Prophet (peace be upon him) was a form of privilege free from the impulses of lust, even though it was a permitted practice. This privilege was not intended to allow its owner to indulge in pleasure and indulge in biological gratification. A household where the wives complain about limited income and jewelry cannot be considered the home of a man driven by his lust and overpowering his reason.[23]

It is absurd to accuse a man of seeking biological pleasure in the life of a man who never rests from the hardships of struggle and tiring jihad. If the bearers of the limited human message are constantly burdened with the problems of social life and have little free time to recuperate before returning to bear the various fatigues, how much more so should a bearer of a great message who faces strong rejection from the Arabs. It is also illogical to assume that someone is immersed in pleasure in old age, when in his youth he had turned away from it. The circumstances underlying the Prophet's marriage to his wives were part of his burden of duty in managing the social order, realizing benefits, and eliminating harm.[24]

The Legal Construction of Polygamy in the Indonesian Marriage System and the Dynamics of its Practice in Indonesia

The practice of polygamy in Indonesia has been a common tradition since the era of Ancient Mataram and Majapahit, and continued until the arrival of Islam because it was considered to have

[21] Ibid.
[22] Anis and K, 'The Marriage of the Prophet Muhammad SAW (Historical and Sociological Analysis)', 95–97.
[23] Haikal, *Ta'addud Az-Zawjāt Fī al-Islām Wa Ḥikmah at-Ta'addud Fī Azwāj an-Nabī Ṣallā Allāh 'Alaih Wa Sallam Wa Daḥḍ Szubuhāt Wa Radd Iftirā'Āt* , 128.
[24] Al-Ghazali, *Fiqh As-Sīrah* , 436–37.

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religious legitimacy. Although often detrimental to women's position, such as the phenomenon of many girls being taken as concubines by Javanese kings, this practice persisted until the pre-independence period among elites such as the priyayi and kyai. Both groups implemented different housing arrangements for their wives: the priyayi from the abangan group generally united their wives in one house, while the kyai provided separate residences for each wife.[25]

Historical records record that the first President of the Republic of Indonesia, Soekarno, had nine wives, namely Siti Oetari (1921–1923), Inggit Garnasih (1923–1943), Fatmawati (1943–1956), Hartini (1952–1970), Kartini Manoppo (1959–1968), Ratna Sari Dewi (1962–1970), Haryati (1963–1966), Yurike Sanger (1964–1968), and Heldy Djafar (1966–1969), some of whom were married polygamously without divorce.[26] In his autobiography (*Sukarno: An Autobiography*), Sukarno stated that Fatmawati was furious about his second marriage, although he believed it should not have happened because his wives were devout Muslims and understood religious law. He did not divorce Fatmawati for the sake of their five children. He argued that although the West considered having a second wife uncivilized, impolite, and barbaric; whatever might be lacking in a person's home life that might lead to his attraction to another woman, it should not harm the children. In this way, the children would still have both parents and their family would not be destroyed.[27]

Polygamy is a controversial marital practice in modern society, particularly in Asia and countries with large Muslim populations. Generally, polygamy refers to marriage with more than one spouse, and in several countries, such as Singapore, India, Lebanon, the Philippines, Nigeria, and South Africa, the practice is recognized under various legal frameworks, including religious, customary, and civil law. In Indonesia, polygamy is regulated by the Marriage Law, subject to certain requirements, including consent and compliance with applicable legal provisions.[28]

Among the regulations governing polygamy in Indonesia is Law Number 1 of 1974 concerning Marriage. Article 3, paragraphs (1) and (2) emphasize that marriage adheres to the principle of monogamy, whereby a man or woman is permitted to have only one legal partner. However, with the consent of the parties concerned, the court has the authority to grant

[25] Abdul Edo Munawar, 'Polygamy Rules: Reasons, Goals, and Level of Achievement of Goals', *Tahkim* 17, no. 1 (June 2021): 35–36.
[26] Andi Setiadi, *The Life and Struggle of Soekarno, the Father of the Nation* , 1st edn (Yogyakarta: Laksana, 2017), 87–108.
[27] Cindy Adams, *Sukarno: An Autobiography* (Hong Kong: Gunung Agung (HK), 1966), 284–85.
[28] 'Anthropological Reasons Why Muhammadiyah People Don't Practice Polygamy', *IBTimes.ID* , November 21, 2019, https://ibtimes.id/alasan-antropologis-orang-muhammadiyah-tidak-poligami/.

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permission to a husband to have more than one wife.[29]

The provisions regarding the application mechanism are regulated in Article 4 paragraphs (1) and (2), which require the husband to submit an official application to the court in the jurisdiction where he resides. The court does not immediately approve the application for polygamy, but can only grant it if objective reasons are met, such as the wife's condition being unable to carry out her obligations, experiencing a physical disability or serious illness that cannot be cured, or being unable to produce children.[30]

The Marriage Law and Islamic law both establish monogamy as the basis of marriage, while polygamy is only an emergency option with very strict requirements to maintain justice and family well-being. Positive regulations in Indonesia even outline the requirements for polygamy in greater detail than classical Islamic jurisprudence, encompassing the court's decision-making process, the first wife's official permission, financial capacity, and objective reasons such as the wife's physical condition or inability to fulfill her obligations. These strict restrictions aim to protect women's rights from potential abuse and ensure that husbands are truly physically, mentally, and emotionally prepared to avoid injustice.[31]

Based on the Compilation of Islamic Law (KHI) Articles 55 to 59, the practice of polygamy is limited to a maximum of four wives with the main requirement that the husband must be able to act fairly and guarantee the family's living needs, which if not met, polygamy is absolutely prohibited. Its implementation must be through permission from the Religious Court in accordance with the procedures of Government Regulation No. 9 of 1975, where marriages without court permission are considered to have no legal force. The court will only grant permission if objective reasons are met, such as the wife being unable to carry out her obligations, experiencing a disability or serious illness that cannot be cured, or being unable to bear children, and supported by the wife's consent either verbally in court or in writing, unless the wife is unable to obtain consent or has been missing without news for at least two years. If the wife refuses to give permission even though objective reasons have been met, the determination of permission can be decided by the judge after examining both parties in court, and the decision can still be

[29] Government of the Republic of Indonesia, 'Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage Article 3 Paragraphs 1-2', 1974.

[30] Government of the Republic of Indonesia, 'Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage Article 4 Paragraphs 1-2', 1974.

[31] Raziq and Faturrahman, 'Sociological and Anthropological Approaches to Polygamy', 171–72.

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appealed or cassation.[32]

The practical implementation of polygamy regulations in Indonesia can be seen in the Bitung Religious Court Decision Number 104/Pdt.G/2021/PA.Bitg. In this decision, the Petitioner's request for permission to polygamy was based on three fundamental reasons: first, the Respondent (legal wife) was unable to fulfill her obligations to the fullest due to her status as a Civil Servant/Teacher at MIN 1 Bitung who could not move to the Petitioner's assignment in Kotamobagu; second, the Petitioner's need for the presence of a legal companion to accompany him while serving in an area far from Bitung; and third, the urge to support the economic and psychological life of his prospective second wife who was a widow without a steady income. This request was further strengthened by the Respondent's official approval, the Petitioner's ability to act fairly with a monthly income of Rp25,000,000.00, ownership of adequate joint assets, and the absence of sharia or legal obstacles, so that the panel of judges legally granted the permission for polygamy.[33]

The application of objective criteria of the law is clearly visible in the Baubau Religious Court Decision Number 0348/Pdt.G/2018/PA Bb. In the decision, the panel of judges granted the application for permission for polygamy because the alternative and cumulative requirements as stipulated in Article 4 and Article 5 of Law Number 1 of 1974 had been fulfilled. The main reason underlying the application was the inability of the first wife (Respondent) to carry out her obligations as a wife and housewife due to having to serve a five-year prison sentence in Baubau Prison for a narcotics case. On the other hand, the Applicant had obtained written consent from the first wife without coercion, had sufficient financial capacity with an income of Rp15,000,000.00 per month as Director of PT Lentera Bukit Wolio Indah, and provided a guarantee to treat his wives and children fairly. In addition, the prospective second wife, who was a divorcee, was confirmed to have no obstacles under sharia or positive law to enter into marriage. Based on the fulfillment of the formal and material criteria, the Panel of Judges assessed that granting permission for polygamy was a beneficial legal step to prevent the parties from committing adultery and harm.[34]

A number of judges' decisions grant permission for polygamy outside the explicit reasons

[32] *Compilation of Islamic Law in Indonesia* (Jakarta: Directorate of KUA and Sakinah Family Development, Ministry of Religion of the Republic of Indonesia, 2018), 28–31.

[33] Nurlaila Harun, 'Analysis of the Bitung District Court Judge's Decision on Polygamy on the Ground that the Wife Cannot Fulfill Her Obligations', *I'tisham: Journal of Islamic Law and Economics* 2, no. 2 (2022): 146–47, https://journal.iain-manado.ac.id/index.php/itisham/article/view/2597.

[34] Baubau Religious Court, Baubau Religious Court Decision Number 0348/Pdt.G/2018/PA Bb (Directory of Decisions of the Supreme Court of the Republic of Indonesia 24 September 2018).

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of the Marriage Law and the KHI in order to consider other aspects of public interest, as observed by Sofa Mina Adib Subekti in the Wonosobo Religious Court Decision Number 711/Pdt.G/2019/PA.Wsb. The granting of permission for polygamy on the grounds of "avoiding slander" in this decision reflects a shift in legal reasoning from formal rationality to substantive rationality in Gunther Teubner's theory. Although the panel of judges still based their considerations on Article 5 paragraph (1) of Law No. 1 of 1974, Article 41 letter c of Government Regulation No. 9 of 1975, and QS. An-Nisā': 3, the acceptance of extra-legal reasons not expressly stated in the law demonstrates an effort to respond concretely to social reality. In Gustav Radbruch's view, this decision prioritizes the value of utility in order to prevent greater moral harm. However, this accommodation of pragmatic considerations poses a normative problem, namely the risk of expanding exceptions to the principle of monogamy without clear limits. Therefore, based on Radbruch's legal ideals, this orientation toward expediency must remain proportionally limited by the principles of legal certainty and justice to avoid creating uncertainty regarding the criteria for permitting polygamy in the future.[35]

In another case, the Bengkalis Religious Court Decision Number 0307/Pdt.G/2017/PA.Bkls granted the petition for permission for polygamy submitted by the Applicant (R) to marry a second wife (Z) on the main grounds that Z had become pregnant outside of marriage. From a juridical-normative perspective, this reason for pregnancy is not included in the alternative criteria stipulated in Article 4 paragraph (2) of Law Number 1 of 1974 or the Compilation of Islamic Law (KHI). However, the panel of judges set aside the rigidity of the written normative text (*contra legem*) by applying the principle *of maslahah* and the rules of fiqh to prevent greater social, psychological, and moral harm, such as abortion, threats to the safety of the fetus, and uncertainty about the legal status of the child. This judge's step, on the one hand, succeeded in realizing legal certainty and sociological protection for the mother and the prospective child. However, on the other hand, his decision triggered normative problems because it risks being used as a precedent or a mode of legitimizing adultery in order to obtain permission for polygamy in the Religious Court.[36]

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[35] Sofa Mina Adib Subekti, 'Legitimacy of Judge's Decision in Application for Polygamy Permit Based on Rational Construction: Study of Wonosobo Religious Court Decision' (Wonosobo Religious Court Class IA, September 14, 2026), https://pa-wonosobo.go.id/legitimasi-putusan-hakim-dalam-permohonan-izin-poligami-berdasarkan-konstruksi/.

[36] Khairil Anwar and Sri Ikamulia, 'Polygamy Permit Case at the Bengkalis Religious Court (Analysis of Judge's Decision Number: 0307/Pdt.G/2017/PA.Bkls)', *JURIS (Syari'ah Scientific Journal)* 18, no. 2 (2019): 168–72, doi:10.31958/juris.v18i2.1656.

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The dynamics of the judiciary in polygamy permit cases in Indonesia demonstrate a stark disparity between *the law on the books* and *the law in action* , where judges often interpret norms flexibly, even resorting to *contra legem* in order to achieve substantive justice and public benefit. Acceptance of extralegal reasons by judges should not be understood as leniency for the applicant, but must be tested through the necessity of realizing social protection and preventing injustice. Judges' considerations that penetrate the rigidity of written norms find their moral-philosophical relevance to the extent that the decision actually restores the dignity of women and guarantees the certainty of the status of vulnerable children. This is in line with the nature of prophetic polygamy, which is not based on biological urges or structural domination, but rather functions as an instrument of social-humanitarian responsibility in emergency situations.

However, the breach of formal criteria in pursuit of substantive justice carries fundamental vulnerabilities if not properly guarded. Referring to the essence *of khuṣūṣiyyah* as a legal exception (*rukhṣah*) that is casuistic and prohibits the establishment of general precedent, the habit of compromising objective criteria of the law risks eroding legal certainty, blurring the principle of monogamy, and triggering the normalization of norm violations. Therefore, the shift in judicial reasoning from formal to substantive rationality must remain controlled by strict limits of legal certainty. A judge's legal considerations must proportionally combine expediency, justice, and legal certainty to ensure that the space for judicial discretion truly serves as a shield of protection and does not shift into a means of legitimizing arbitrariness.

Conclusion

Polygamy is a historical social practice that in pre-Islamic times, both in the Jahiliyah tradition and earlier scriptures, took place without any restrictions on number of wives, and has continued to be rooted in Indonesian history since the Ancient Mataram and Majapahit eras until it was practiced by the elite priyayi, kyai, and public figures. Islam reformed this practice by outlining monogamy as the main principle and placing polygamy as an exception (*rukhṣah*) with a maximum of four wives accompanied by the condition of justice. In the context of prophecy, the polygamy of the Prophet Muhammad (peace be upon him) is a form of legal specialization (*khuṣūṣiyyah*) with socio-anthropological dimensions such as protection of vulnerable groups, social integration, and da'wah diplomacy, which fundamentally refutes the stigma of satisfying biological urges alone. In Indonesia, the diversity of polygamous practices often triggers controversy and social stigma, so the state strictly regulates the procedure for applying for polygamy permits through Law No. 1 of 1974 and the KHI which requires a mechanism for proving

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objective requirements in the Religious Courts. However, in *law in action* , judges often shift reasoning from formal to substantive rationality by breaking through written norms (*contra legem*) in order to grant permit requests based on extralegal and practical considerations of society, such as demands for workplace assignments, economic recovery of widows, or prevention of slander based on *maṣlaḥah* . Therefore, the essence *of khuṣūṣiyyah* and *rukhṣah* which are casuistic in nature become a philosophical basis that the use of judicial discretion in approving polygamy permit requests must be strictly fenced by the principles of legal certainty and justice, so as not to erode the principle of monogamy and prevent exceptional norms from transforming into precedents that justify arbitrariness.

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