

A Discourse of Marriage Principles in a Multicultural Society in Indonesia: Mono and Polygamous Practices

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Abstract

This paper delves into the discourse surrounding marriage principles within Indonesia's diverse multicultural landscape, with a particular focus on both monogamous and polygamous practices. As a nation characterized by rich cultural and religious diversity, Indonesia provides a unique context for examining the dynamics of marital norms and traditions. Through a comprehensive analysis, this study explores the historical, legal, and socio-cultural dimensions of monogamous and polygamous marriages, shedding light on their prevalence, legal frameworks, and societal implications. Drawing upon legal perspectives, societal attitudes, and empirical evidence, this discourse aims to provide a nuanced understanding of the complexities inherent in marital practices within Indonesia's multicultural society. Ultimately, this study contributes to



broader discussions on marriage, diversity, and legal pluralism, offering insights into the evolving nature of marital norms and their intersection with Indonesia's multicultural fabric.

KEYWORDS *Marriage Principles, Polygamous, Monogamous, Indonesian Multicultural Society, Interfaith Marriage*

Introduction

Monogamy stands as a foundational tenet within Indonesian marriage law. While the legal framework emphasizes monogamy as the prevailing norm, it also acknowledges the possibility of polygamy under specific conditions. The legal landscape delineates clear distinctions between these principles, emphasizing monogamy as primary, as outlined in Law Number 1 of 1974 (Articles 3, 4, and 5, subsequently amended by Law Number 16 of 2019).¹ However, this principle is not absolute but relative. Polygamous unions are permissible with the wife's consent, subject to the terms stipulated in the Compilation of Islamic Law, which governs the practice for Muslims. This intersection between statutory law and Islamic jurisprudence aims to ensure a structured approach to polygamous marriages, preventing arbitrary actions against wives and promoting fairness within marital relations.²

¹ Edy Mulyanto, "Azas Monogami dan Azas Poligini dalam Sistem Hukum Perkawinan di Indonesia Beserta Sanksi terhadap Pelanggarnya." *Pamulang Law Review* 5, no. 1 (2022): 109-122. See also Nurhidayatulloh Nurhidayatulloh, et al. "Forsaking equality: Examine Indonesia's state responsibility on polygamy to the marriage rights in CEDAW." *Jurnal Dinamika Hukum* 18, no. 2 (2018): 182-193; Theresia Dyah Wirastri, and Stijn Cornelis Van Huis. "The second wife: Ambivalences towards state regulation of polygamy in Indonesia." *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 246-268.

² Esther Masri, "Poligami dalam Perspektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam (KHI)." *Krtha Bhayangkara* 13, no. 2 (2019): 223-241. See also Dri Santoso, and Muhamad Nasrudin. "Polygamy in Indonesia and its Relevance to the Protection of Women and Children in the

In addition, marriage, as an institution, reflects the intricate tapestry of cultural, religious, and legal norms within a society. Nowhere is this complexity more pronounced than in Indonesia, a nation celebrated for its rich diversity and multicultural ethos. At the heart of Indonesia's marital landscape lies a dynamic interplay between monogamous and polygamous practices, each rooted in distinct traditions and legal frameworks.

Constitutionally, under Article 28B paragraph (1) of the 1945 Constitution, the Government of Indonesia has pledged to uphold comprehensive human rights, encompassing the right to life, the right to establish a family, and protection against violence and discrimination. Specifically, Article 28B paragraph (1) asserts: "*everyone has the right to form a family and continue their lineage through legal marriage.*" The correlation between monogamy and polygamy within the institution of marriage presents a fundamental divergence. Monogamy, as the prevailing norm, cannot be reconciled with polygamous unions. The essence of monogamy lies in its exclusive fidelity, aligning with the principles of human dignity. Ideally, monogamous marriage epitomizes a choice rooted in spiritual conviction, reflecting a divine preference for the union of one man and one woman to perpetuate their lineage.

Drawing upon some studies, which examined men over 60 years old from 140 countries, it was revealed that polygamous individuals exhibit a 12% higher level of life motivation compared to their monogamous counterparts. Furthermore, analysis of World Health Organization (WHO) data, further corroborated this finding, suggesting that men who continue to father children into their sixties and seventies are inclined to

Perspective of Islamic Law Philosophy." *Akademika: Jurnal Pemikiran Islam* 26, no. 1 (2021): 121-136; Ah Kholish Hayatuddin Desti Widiani, "Socio-Juridical Analysis on Polygamy Requirements in the Compilation of Islamic Law (KHI)." *Al-Adalah* 19, no. 1 (2022): 195-222; Desti Widiani, and Dwiky Bagas Setyawan. "Polygamy in Islamic Family Law in Indonesia (Comparative Study on Law Number 1 of 1974 and the Compilation of Islamic Law)." *1st International Seminar on Sharia, Law and Muslim Society (ISSLAMIS 2022)*. Atlantis Press, 2022.

prioritize self-care due to their ongoing responsibility to provide for their offspring.³

In Indonesia, despite ongoing debates surrounding its merits and drawbacks, polygamy remains a legally and religiously sanctioned marital practice. Government Regulation No. 10 of 1983, specifically Section 4, delineates regulations governing polygamy for Civil Servants. Male civil servants intending to enter into polygamous marriages are required to obtain written authorization from their superiors, while female civil servants are prohibited from becoming second, third, or fourth wives, as stipulated by Government Regulation No. 45 of 1990.⁴

The Marriage Law, as outlined in Article 3 paragraph (1), unequivocally states that fundamentally, a man is permitted only one wife, and likewise, a woman is allowed only one husband. However, paragraph (2) of the normative provisions introduces the possibility of polygamous marriages for men. Under this provision, a husband seeking polygamy must petition the court in their domicile for permission, subject to the consent of all parties involved. The court may grant a polygamy license under specific circumstances: if the wife is unable to fulfill her marital duties, suffers from an incurable ailment, or is unable to bear children.⁵

Scholarly perspectives on marriage further elucidate its legal framework and societal significance. According to Subekti, marriage

³ Nilam Suri, "Poligami, Kunci Panjang Umur Pria", *Liputan 6*, June 12, 2018. Retrieved from <<https://www.liputan6.com/health/read/3558429/poligami-kunci-panjang-umur-pria#>> See also and compare with Jennifer C. Regan, and Linda Partridge. "Gender and longevity: why do men die earlier than women? Comparative and experimental evidence." *Best Practice & Research Clinical Endocrinology & Metabolism* 27, no. 4 (2013): 467-479; M., V. Lummaa Lahdenperä, and A. F. Russell. "Selection on male longevity in a monogamous human population: late-life survival brings no additional grandchildren." *Journal of Evolutionary Biology* 24, no. 5 (2011): 1053-1063; Tsoaledi Daniel Thobejane, and Takayindisa Flora. "An exploration of polygamous marriages: A worldview." *Mediterranean Journal of Social Sciences* 5, no. 27 (2014): 1058-1066.

⁴ Dwi Anggun Lestari, and Endang Sri Indrawati. "Meniti Takdir Poligami (Interpretative Phenomenological Analysis Pada Pengalaman Kepuasan Pernikahan Suami Yang Berpoligami)." *Jurnal EMPATI* 8, no. 3 (2020): 530-544.

⁵ Mulyanto, "Azas Monogami dan Azas Poligini dalam Sistem Hukum Perkawinan di Indonesia Beserta Sanksi terhadap Pelanggarnya."

constitutes a lasting legal bond between men and women.⁶ Similarly, Scholten defines marriage as a perpetual legal union between a man and a woman, duly recognized by the state.⁷ The state, acting as a conduit for legal enforcement, derives its authority from societal legal consciousness, thereby possessing inherent legal jurisdiction that transcends individual interests.⁸

Moreover, State decisions are rooted in Pancasila, wherein the first principle emphasizes the belief in the One and Only Godhead. This underscores the religious and spiritual dimension inherent in the institution of marriage, which encompasses the continuation of lineage, provision, and education, aligning with the foundational objectives of marriage.⁹

Furthermore, Article 2 of the Compilation of Islamic Law underscores the sanctity of marriage within Islamic jurisprudence. It defines marriage as a robust covenant, termed "*mitsaqan ghalidzan*,"¹⁰ designed to uphold and implement the commandments of Allah, thereby rendering marital obligations as acts of worship.

⁶ Ratih Subekti, "Hubungan Umur dan Status Perkawinan dengan Kejadian Gonore di Puskesmas Madukara I Kabupaten Banjarnegara Tahun 2015." *Scientific Journal of Medsains* 3, no. 1 (2017): 1-5.

⁷ Paul Scholten, *Struktur Ilmu Hukum*. (Bandung: Alumni, 2003). See also Upik Djalins, "10 Paul Scholten and the Founding of the Batavia Rechtshogeschool." *DPSP Annual* 1, no. 1 (2020): 160-196.

⁸ Tengku Erwinsyahbana, "Sistem Hukum Perkawinan Pada Negara Hukum Berdasarkan Pancasila." *Jurnal Ilmu Hukum* 3, no. 1 (2012): 1-29

⁹ See Kunthi Tridewiyanti, "Pancasila as the Marriage Legal Idea for Indigenous Women and Ancestors." *Law Research Review Quarterly* 2, no. 4 (2016): 475-496.

¹⁰ *Mitsaqan ghalidzan* is an Arabic term that translates to "a strong covenant" or "a firm contract." In the context of Islamic marriage, it refers to the solemn and binding agreement made between a husband and a wife. This covenant is considered sacred and unbreakable, signifying the seriousness and commitment involved in the marital relationship according to Islamic teachings. The term highlights the gravity of the marital contract, emphasizing the obligations, responsibilities, and rights that both spouses undertake upon entering into marriage. It signifies a commitment not only between the couple but also to the principles and teachings of Islam. By invoking "*mitsaqan ghalidzan*," Islamic marriage is elevated to a spiritual and moral contract, emphasizing fidelity, support, and mutual respect as essential components of the marital bond.

The notion of gender justice is discernible through the lens of justice theory's evolution, which comprises two key categories: distributive justice and commutative, or corrective justice. Distributive justice entails equitable allocation of resources and responsibilities, ensuring parity between contributions and compensations, rights and obligations, as well as rewards and penalties. On the other hand, commutative or corrective justice underscores the principle of equal treatment and rights regardless of gender, social status, ethnicity, and other distinguishing factors.

In specific contexts, Islamic teachings advocate for the equitable treatment and status of both men and women, reflecting principles of commutative justice. Within this framework, gender equality is emphasized, affirming equal rights, opportunities, and responsibilities for individuals irrespective of gender. This embodies a commitment to fairness and equity, aligning with broader principles of justice within Islamic ethics and jurisprudence.¹¹

The Quran, as the cornerstone of Islam, underscores the principle of gender equality, affirming parity between men and women in various aspects of human existence. For instance, Quranic verses such as QS al-Hujurat 49:13 highlight the equal status of men and women as part of humanity, while others, like QS al-Tawbah 9:71, emphasize their shared obligations and adherence to religious prohibitions. Additionally, passages such as QS al-Buruj 85:10, QS al-Nisa' 4:124, QS al-Nahl 16:97, and QS Ghafir 40:40 illustrate how both genders bear the weight of faith and are subject to the consequences of their actions.

However, Islam also upholds distributive justice concerning the distinct roles and responsibilities assigned to men and women. For instance, differences exist in the role of women as witnesses, their inheritance rights, and opportunities for leadership roles within families or communities. This nuanced approach reflects Islam's commitment to

¹¹ Bahder Johan Nasution, "Kajian Filosofis Tentang Konsep Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern." *Yustisia* 3, no. 2 (2014): 118-130. *See also* James King, "Hume's Classical Theory of Justice." *Hume Studies* 7, no. 1 (1981): 32-54; Wojciech Dzedziak, "Thoughts on the Notion of Justice." *Studia Iuridica Lublinensia* 30, no. 2 (2021): 139-148; Ridwan Arifin, "Translating the Meaning of Justice and Legal Protection: What exactly is justice?." *Journal of Indonesian Legal Studies* 7, no. 1 (2022): i-iv.

fairness, recognizing the inherent diversity and complementarity between genders. Attempting to equate men and women in all aspects—be it roles, positions, social status, occupations, or rights—would disregard the natural distinctions between them. Acknowledging these differences doesn't undermine equality but rather recognizes the unique qualities and contributions each gender brings to society, thereby reflecting Islam's balanced stance on gender relations.¹²

In the further, the functional structural approach emerged as a response to the theory of evolution, aiming to provide a nuanced understanding of social systems and structures amidst the increasing awareness of human cultural diversity. Initially, the theory of evolution sought to establish a hierarchical framework for cultural development. However, functional structuralism countered this notion by emphasizing the intricate interplay between individual, group, and institutional dynamics within society.

At its essence, the functional structural approach views society as a complex, interconnected system wherein various elements work together to either maintain stability or facilitate change in communal relations. This conceptual framework underscores the importance of analyzing the constituent parts of social systems and their interrelations, as well as their alignment with individual motivations and behaviors.

When applied to sociological theory, particularly within the realm of family dynamics, the functional structural approach perceives the family unit as a cohesive entity characterized by shared principles and values that influence broader social interactions. It emphasizes the significance of understanding how different societal structures support diverse activities and interact with individual motivations within the family context.

Crucially, the functional structural approach offers a clear lens through which to examine societal organization, recognizing the presence of distinct structures that contribute to the richness and diversity of the social fabric. It acknowledges the multifaceted nature of social interactions

¹² Rohatun Nihayah, "Kesetaraan Gender Melalui Pendekatan Hermeneutika Gadamer dalam Kajian QS Al-Hujurat Ayat 13." *Syariati: Jurnal Studi Al-Qur'an dan Hukum* 7, no. 2 (2021): 207-218.

and highlights how individuals' positions within the societal framework shape their experiences and outlooks.¹³

This analysis is focused on examining the manifestations of needs, motives, and attitudes, particularly concerning the impetus for action aimed at achieving fulfillment within a given social framework. Parsons' framework underscores the fundamental role played by actors within this context, conceptualizing them not merely as individuals but as functional components carrying out specific roles within the structural fabric of the system. Consequently, Parsons highlights the imperative of harmonizing value patterns within this framework, thereby fostering alignment between actors and the prevailing social structures.

Integral to achieving this alignment is the process of internalization and socialization. Through internalization, actors assimilate the norms and values inherent within the social system, incorporating them into their cognitive framework. Successful socialization entails the internalization of these norms and values, resulting in their integration into the actor's consciousness. Consequently, when pursuing their individual interests, actors are compelled to consider the broader interests of the system as a whole. This reciprocal relationship ensures that individual actions contribute to the overall functioning and cohesion of the larger social structure.

This paper embarks on a nuanced exploration of the principles governing marriage in Indonesia, with a particular focus on the coexistence of mono and polygamous unions. We delve into the legal foundations, societal attitudes, and religious interpretations that shape these practices within Indonesia's multicultural milieu. Central to our inquiry is an examination of the legal landscape surrounding marriage. Indonesian law, as encapsulated in statutes such as Law Number 1 of 1974, underscores the primacy of monogamy while providing provisions for polygamous unions under specified conditions. However, beyond legal statutes, we aim to uncover the socio-cultural dynamics that influence marital norms and practices.

¹³ Anastasia Baan, *Refleksi Budaya Dalam Berbahasa: Penggunaan Bahasa dalam Konteks Budaya Masyarakat* (Malang: Cakrawala Indonesia, 2021).

Furthermore, our analysis extends to the role of religion in shaping marital principles. Indonesia's diverse religious fabric, prominently including Islam, Christianity, Hinduism, and Buddhism, each offer unique perspectives on marriage, influencing both legal frameworks and societal norms. Of particular significance is the interplay between statutory law and Islamic jurisprudence concerning polygamous marriages, a discourse that illuminates broader tensions between state governance and religious autonomy.

In navigating these complexities, our study seeks to elucidate not only the legal and religious dimensions of marriage but also the lived experiences and societal perceptions that underpin marital practices. Through a multidisciplinary lens, we endeavor to contribute to a deeper understanding of marriage principles in Indonesia's multicultural society, fostering dialogue and insights that resonate across diverse contexts.

Exploring the Manifestation of Symptoms and Motivations: The Legal Embrace of Monogamy and Polygamy Principles in Indonesian Positive Law

One of the key outcomes of legal certainty governing marital dissolution in Indonesia is enshrined in Law Number 1 of 1974 on Marriage. This legislation covers various aspects, including marriage agreements, property division post-divorce, and regulations pertaining to mixed marriages (interfaith marriages) conducted within Indonesia. Additionally, it designates specific judicial authorities with the competence to issue marriage licenses and to arbitrate diverse marital disputes. The incorporation of religious elements into the Marriage Law establishes a cohesive framework, particularly evident in the principle of monogamy, which holds sway among adherents of Islamic teachings, underscoring consistency and distinctiveness within the legal system.¹⁴

The significance of Islamic religious teachings that allow the principle of polygamy to be applied within certain limits, as the rule of

¹⁴ Hanafi Arief, "Perjanjian dalam Perkawinan (sebuah telaah terhadap hukum positif di Indonesia)." *Al-Adl: Jurnal Hukum* 9, no. 2 (2017): 151-172.

KHI law, namely the Qur'an. It seems that the principle of monogamy in making the law is more considerate of most people who are Muslim. In QS. An-Nisa: 3, Allah said:

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' one¹ or those 'bondwomen' in your possession.¹⁵ This way you are less likely to commit injustice.

This verse represents one interpretation of the Qur'an regarding the permissibility of polygamy within Islamic doctrine. Upon closer examination, the verse does not mandate or encourage extensive polygamous practices, but rather advises against it if a husband is unable to maintain equitable treatment among multiple wives. It suggests that fostering a sense of fairness among wives is attainable, particularly concerning the distribution of material gifts from the husband.¹⁶

In the authors' analysis, the regulations within the Compilation of Islamic Law (*Kompilasi Hukum Islam*, hereinafter as KHI), particularly

¹⁵ In the explanation: A bondwoman is a female slave that a man owned either through purchase or taking her captive in war—a common ancient practice in many parts of the world. Islam opened the door for ending slavery by making it an act of charity to free slaves. Many sins (such as breaking one's oath, unintentional killing, and intercourse with one's wife during the day of fasting in Ramaḍân) can be atoned by freeing a slave. According to Islamic teachings, no free person can be enslaved. Islam also improved the condition of slaves. It was unlawful to separate a mother from her child. Children born to a slave-master were deemed free, and their mother would gain her freedom upon the death of her master. With regards to slaves, Prophet Muḥammad (ﷺ) says, "Feed them from what you eat, clothe them from what you wear, and do not overwhelm them with work unless you assist them." He (ﷺ) also says, "Whoever kills his slave will be killed and whoever injures his slave will be injured." In recent times, slavery has been outlawed in all countries—including the Muslim world. See <https://quran.com/an-nisa/3>

¹⁶ Erma Sauva Asvia, "Konsep Adil Poligami dalam QS An-Nisa: 129." *An-Nahdha: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 13, no. 2 (2020): 270-288.

those governing polygamous practices outlined in Chapter IX titled "*having more than one wife*," intersect with the stipulations of Indonesia's Marriage Law Number 1 of 1974. The Marriage Law unequivocally upholds the principle of monogamy for marriages in Indonesia, as detailed in Article 3. However, the provisions within the Compilation of Islamic Law acknowledge the possibility of polygamy under certain stipulated conditions, albeit with stringent requirements.

Nevertheless, the authors contend that the principle of polygamy outlined in the Compilation of Islamic Law often encounters resistance and tends to be disregarded, given the prevailing emphasis on monogamy within the legal framework. Despite this, the rules delineated in Chapter IX of the Compilation of Islamic Law tend to exert greater influence over the application of polygamy, thereby overshadowing the principle of monogamy in certain contexts.¹⁷

The practice of monogamy is entrenched within Indonesia's national legal framework as a cohesive principle, with the Compilation of Islamic Law (KHI) intended to function as a subsidiary component within the broader system governing marriage. Specifically, Article 55 paragraph (1) of the KHI imposes restrictions on polygamous unions, subjecting them to certain requirements. According to Article 56 paragraph 2 of the KHI, these requirements include obtaining prior approval from the religious court and adhering to the procedural guidelines outlined in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 regarding Marriage.

The process of seeking permission from the religious court for polygamous marriages within Islamic communities in Indonesia also adheres to the regulations outlined in Government Regulation Number 9 of 1975. Consequently, there are no specific requirements that differentiate Indonesian citizens adhering to other faiths, such as Buddhism, Hinduism, Christianity, and Catholicism.¹⁸ Therefore, if a husband intends to take multiple wives simultaneously, it is imperative to

¹⁷ Surjanti Surjanti. "Tinjauan Kompilasi Hukum Islam Terhadap Poligami di Indonesia." *Jurnal Bonorowo* 1, no. 2 (2014): 13-22.

¹⁸ Rita Faura, "Pelaksanaan Permohonan Izin Poligami di Pengadilan Agama Klas IA Padang." *Unes Journal of Swara Justisia* 5, no. 2 (2021): 198-209.

abide by the national law, particularly Marriage Law Number 1 of 1974. This is because Government Regulation Number 9 of 1975 serves as an extension of the Marriage Law, emphasizing monogamous unions rather than polygamy.

Building upon the perspective of Shaykh Musthafa al-Maraghi as outlined in the book *Abu Yasid*, it is emphasized that the establishment of a harmonious and loving household (*mawaddah warahmah*) is best ensured when a husband maintains monogamy. Monogamous unions hold the distinct advantage of fostering tranquility and stability within the family, often referred to as *sakinah*.

However, practical realities sometimes necessitate the consideration of polygamous arrangements as a last resort. For instance, situations where the wife is unable to conceive, yet the husband desires offspring to perpetuate his lineage, or scenarios where the wife's temperament clashes significantly with the husband's. In such instances, polygamy may be deemed permissible to resolve the impasse, though it does not negate the initial reasons for prohibition. Instead, polygamy serves as a measure to fulfill the original purpose of marriage when all other avenues have been exhausted.¹⁹

It is crucial to recognize that polygamy should not be utilized as a means to satisfy base desires or as a sole motivation for life. When the Prophet instituted polygamy, it was under divine sanction and with noble intentions, not as a license for indulgence in carnal desires. Rather, the decision to engage in polygamy should be motivated by genuine benefit, with a focus on fostering household welfare and harmony. Importantly, polygamous arrangements should not result in neglect or abandonment of the first wife and her children. Only when these conditions are met can polygamy be deemed acceptable within the bounds of Islamic principles.

The classical scholars, for the most part, affirmed the permissibility of polygamy within Islamic doctrine. While neither the Qur'an nor the hadith explicitly prohibits polygamy, numerous verses and hadiths, as cited or referenced by scholars, indicate the allowance of marrying up to

¹⁹ Santoso Dri, "Pembatasan dan Pengaturan Poligami dalam Undang Undang Nomor 1 Tahun 1974 dan Hukum Islam Perspektif Maqashid Asy-Syari'ah". *Thesis* (Lampung: UIN Raden Intan Lampung, 2020).

four women. However, Islam effectively regulated early irregular and unconstrained marriages, leading to a consensus among classical scholars that such regulations were aimed at ensuring fairness in polygamous relationships.

In contrast, modern scholars diverge in their interpretations, particularly regarding verse (3) of Surat al-Nisa. Haifah A. Jawad, for instance, suggests that this verse leans toward discouraging polygamy, arguing that achieving justice, a prerequisite for polygamy according to the Quran (Q.S. AnNisa: 129), is unattainable for every man. Muhammad Abduh shares a similar perspective, contending that polygamy is permissible only in exceptional circumstances, such as during times of war, provided it does not lead to harm or injustice. Abduh further suggests that while polygamy might have been suitable for early Muslims, it has now become problematic, resulting in conflicts, animosity, and discord among wives and their children.²⁰

According to the Marriage Law, prospective spouses are permitted to enter into a written agreement concerning the ownership and disposition of property before their marriage. This agreement must be authorized by the marriage registrar. Furthermore, any terms agreed upon by the parties automatically extend to third parties related to the marriage. However, if the agreement violates legal, religious, or moral principles, it is considered void. In practice, the marriage agreement becomes effective upon marriage and can be modified if all parties involved agree, as long as such modifications do not harm third parties.²¹

In normative terms, Article 1313 of the Civil Code defines consent as the act through which one or more individuals commit themselves to another party or parties. This aligns with the stipulations of the Civil Code, which mandates that agreements must be executed in the presence of a notary to be valid; failure to do so renders the agreement null and void, as stated in Article 147. The concept of consent is theoretically rooted in the notion of covenant or agreement. Further elaboration within

²⁰ Masiyan M. Syam, and Muhammad Syachrofi. "Hadis-Hadis Poligami (Aplikasi Metode Pemahaman hadis Muhammad al-Ghazali)." *Diroyah: Jurnal Ilmu Hadis* 4, no. 1 (2019): 90-98.

²¹ Tinuk Dwi Cahyani, *Hukum Perkawinan*. (Malang: UMM Press, 2020).

the Civil Code defines a legal relationship wherein two individuals confer rights upon one party, who is then entitled to enforce those rights, while the other party is obligated to fulfill them. An engagement essentially establishes a legal relationship between two individuals. This relationship is founded upon an agreement, as outlined in Article 1233.

The marriage law and the Compilation of Islamic Law each outline specific forms of agreements. In the Compilation of Islamic Law, these agreements are detailed within the articles, particularly concerning matters like *ta'lik talaq*,²² ensuring adherence to Islamic principles. For instance, Article 47 paragraph (2) addresses agreements pertaining to personal property, individual property separation, authority to encumber joint property and personal property, while safeguarding the financial stability of the wife's livelihood.

Conversely, the Civil Code enumerates various forms of marriage agreements, including conditional engagements, time provisions, options for selection, joint responsibilities, divisible and indivisible agreements, as well as stipulated punitive sanctions.²³

²² Ta'lik talaq refers to a provision within Islamic law that grants a husband the right to revoke or retract a divorce pronouncement during the waiting period (*iddah*) after the initial declaration of divorce. This waiting period is a prescribed duration during which the wife must observe chastity and remain in the marital home unless a separate agreement is reached. If the husband decides to revoke the divorce during this waiting period, it nullifies the divorce and restores the marriage relationship without the need for a new marriage contract. However, once the waiting period expires, the revocation of the divorce becomes more complex and may necessitate a new marriage contract if the couple wishes to reconcile. The concept of ta'lik talaq aims to provide a period of reflection for both parties and offers an opportunity for reconciliation before the divorce becomes final. It is designed to safeguard against impulsive decisions and encourage the preservation of the marital bond whenever possible within the framework of Islamic jurisprudence. *See also* Hibnu Nugroho, "Kedudukan Taklik Talak Menurut Hukum Fikih dan Kompilasi Hukum Islam." *Al-Bayyinah* 2, no. 1 (2018): 73-90; Syaefuddin Haris, "Kedudukan Taklik Talak dalam Perkawinan Islam Ditinjau dari Hukum Perjanjian." *Arena Hukum* 6, no. 3 (2013): 336-359; Abduh, Muhamad, and Tutik Hamidah. "Tinjauan Mashlahah Imam Al-Ghazali Terhadap Taklik Talak dalam Hukum Positif Indonesia." *DIKTUM: Jurnal Syariah dan Hukum* 19, no. 2 (2021): 133-148.

²³ Syaefuddin Haris, "Kedudukan Taklik Talak dalam Perkawinan Islam Ditinjau dari Hukum Perjanjian." *Arena Hukum* 6, no. 3 (2013): 336-359.

Exploring Justice Perspectives: The Grading of Multicultural Societies Based on Monogamy or Polygamy

Indonesia's legal framework strongly advocates for the principle of monogamy as the preferred marital structure. However, there remains a pressing need for enhanced governmental enforcement measures to curb the widespread occurrence of polygamous marriages conducted without court approval and in violation of the regulations outlined in the Compilation of Islamic Law (KHI) and the Marriage Law.²⁴

While Article 3 of the Marriage Law establishes monogamy as the prevailing principle, it does allow for exceptions under certain extraordinary circumstances, as elucidated in Article 3 paragraph (2). Notably, the institution of polygamy is not unilaterally sanctioned by the husband but is contingent upon judicial authorization, as mandated by Article 44 of Government Regulation No. 9 of 1975 regarding the Implementation of the Marriage Law. This regulation expressly prohibits marriage registration for husbands seeking to marry multiple spouses until they have obtained prior court approval as stipulated in Article 43.

Essentially, the process of seeking permission for polygamy from the Religious Court poses inherent challenges, particularly as it necessitates the consent of the current wife. Moreover, if the polygamy application pertains to the interests of other parties, such as potential disputes over shared property, it may lead to conflicts between the involved parties, warranting resolution through litigation.²⁵ Consequently, such disputes are adjudicated through legal proceedings and recorded in the master register of lawsuits.

If a judge issues a final and conclusive decision against granting permission for polygamy, marriage registration or civil registration officials

²⁴ Avisena Aulia Anita, "Perbandingan Pengaturan Asas Monogami Antara Negara Civil Law (Indonesia) dan Common Law (Malaysia)." *Jurnal Notaire* 1, no. 1 (2018): 149-166.

²⁵ Wiwin Wiwin, Muhammad Darwis, and Emhy Zelvia Syam. "Telaah Kritis Pemberian Izin Poligami dengan Alasan Sering Ditinggal Istri (Studi Putusan Nomor 28/Pdt. G/2021/PA. Ek)." *Hukamaa: Jurnal Hukum Keluarga Islam* 1, no. 2 (2023): 1-10.

are prohibited from proceeding with the marriage registration of a husband intending to marry more than one wife until the Court's permission is obtained, as stipulated in Government Regulation No. 9 of 1975, Article 43. In such cases, the husband should ideally submit a written application to the court institution.²⁶ According to Paputungan and Sofyan A.P Kau, the practice of polygamy by the Prophet Muhammad (PBUH) was primarily motivated by religious considerations and his mission.²⁷

Firstly, it served as a means of educational transition, particularly concerning issues related to women. This rationale is evident in the marriage of the Prophet Muhammad (SAW) to Aisha, the daughter of Abu Bakr al-Shiddiq. *Secondly*, polygamous marriages were conducted as part of deconstructing pre-Islamic customs (*jahiliyah*), as exemplified by the marriage to Juwariyyah bint al-Harith.²⁸ These marriages aimed to eradicate the practice of *tabbani*, which involved adopting children and granting them the same status as biological offspring in matters of inheritance and marriage, including adding the adopted child's name to that of the adoptive parents.²⁹

The manifestation of feminist opposition to the underlying motivations behind polygamous practices.³⁰

1. *Polygamy epitomizes the patriarchal structure inherent in marriage.*

Patriarchy, as a social construct, establishes men as the primary authority within social, political, and familial institutions. Consequently, in patriarchal societies, women are often relegated to secondary or subordinate roles. Historically, patriarchal norms emerged concurrently with the advent of private property ownership.

²⁶ Hotnidah Nasution, "Pembatalan Perkawinan Poligami di Pengadilan Agama (Tinjauan dari Hukum Positif)." *Jurnal Cita Hukum* 1, no. 1 (2013): 137-150.

²⁷ Risno Paputungan, and Sofyan AP Kau. "Argumen Kaum Feminis Terhadap Penolakan Poligami di Indonesia." *As-Syams* 1, no. 1 (2020): 121-147.

²⁸ Mahmuddin Bunyamin, "Penafsiran Ayat-Ayat Poligami Dalam Al-Qur'an." *Al-Dzikra: Jurnal Studi Ilmu al-Qur'an dan al-Hadits* 9, no. 2 (2017).

²⁹ Mas'ut Mas'ut. "Hak Kewarisan Anak Angkat Menurut Hukum Islam Di Indonesia." *Diponegoro Private Law Review* 4, no. 2 (2019): 23-30.

³⁰ Paputungan, and Kau. "Argumen Kaum Feminis Terhadap Penolakan Poligami di Indonesia."

It is argued that within patriarchal systems, women are viewed as assets belonging to men and their families. This perspective fosters a sense of ownership or possession over women, thus motivating some men to seek multiple wives as a means of expanding their "assets."³¹

2. *Polygamy serves as a platform for the exploitation of women's bodies.*

In patriarchal societies, women's bodies are frequently relegated to roles of reproduction, sexual gratification, and servitude to husbands or men. The decision to engage in polygamy often stems from a desire to fulfill sexual desires or, at times, due to infertility issues with one wife. Alternatively, it may be attributed to the perception that a wife is unable to meet expectations of servitude or fidelity. These arguments remain entrenched within the confines of patriarchal ideology.

Polygamy acts as a catalyst for domestic violence, a sentiment echoed by numerous women's organizations, including the recent Women Ulema Congress. Despite being often justified under the guise of fairness, polygamy frequently proves challenging for men to uphold justice equitably. Multiple wives often find themselves ensnared in competition and jealousy, feeling marginalized by their husbands, which often leads to arguments and instances of domestic violence. This issue is exacerbated, particularly among men with modest economic means, by the patriarchal construct that designates men as the primary breadwinners and women as supplementary earners. The complexity of domestic violence within polygamous relationships stems from the inability to meet the financial needs of multiple wives due to economic constraints, fueling internal conflicts within the family unit.

3. *Polygamy often leads to the neglect of children's rights.*

Offspring of polygamous unions may receive diminished attention and support from their fathers, depriving them of both

³¹ See also Dharmayani Dharmayani, and Abd Qohar. "Polygami in Contemporary Muslim Feminist Paradigm in Indonesia." *The First International Conference on Islamic Development Studies 2019, ICIDS 2019, 10 September 2019, Bandar Lampung, Indonesia.* 2019; Nina Nurmila, "The current battles between progressive and conservative Muslim women in Indonesia." *Agenda: Jurnal Analisis Gender dan Agama* 2, no. 1 (2020): 1-9.

moral guidance and material resources essential for their holistic development.³²

4. *Polygamy contradicts the principle of independence, which aims to achieve equality between men and women as citizens, extending into familial structures.*

Polygamy perpetuates male dominance within marriage and family dynamics, undermining efforts towards gender equality. As articulated by women's activist and former Minister of Social Affairs during the early years of the Republic of Indonesia, Maria Ulfa Santoso, true parity between men and women in advancing the nation is unattainable without ensuring equal independence for women alongside men.³³

Masjufuk Zuhdi interprets that Islam sees polygamy as prioritizing risks rather than benefits. This is because, according to his nature, humans have the disposition of envy, jealousy, and love to complain.³⁴ This character easily arises if in a situation where polygamy is carried out, thus disturbing the peace of the family and can endanger the integrity of the family. The fact that polygamy can trigger life conflicts in the family, both conflicts between husbands and wives and children of their wives, as well as conflicts between wives and their respective children.³⁵ Therefore, the initial law of marriage in Islam was monogamy, because it was considered

³² See also Zezen Zaenal Mutaqin, "Culture, Islamic feminism, and the quest for legal reform in Indonesia." *Asian Journal of Women's Studies* 24, no. 4 (2018): 423-445; Siti Raudhatul Jannah, and Y. W. Izzati. "Resistance of poligamous women." *Budapest International Research and Critics Institute-Journal* 3, no. 4 (2020): 3017-3027.

³³ Wajiran Wajiran. "Polygamy and muslim women in contemporary Indonesian literature." *Humaniora* 30, no. 3 (2018): 291-304; Murniati Murniati, Henry Agus Sulistiyono, and Wahidullah Wahidullah. "Analyzing polygamy requirements in Indonesia by reading women in text and culture." *JICSA (Journal of Islamic Civilization in Southeast Asia)* 9, no. 2 (2020): 252-269. See also Nur Janti, "Yang Kaya yang Madu Tiga: Di masa kolonial, poligini banyak ditemukan di kalangan bangsawan dan kelas berada". *Historia*, February 15, 2019. Retrieved from <<https://historia.id/kultur/articles/yang-kaya-yang-madu-tiga-vgLYk>>.

³⁴ Masjufuk Zuhdi, *Masail Fiqhiyah*. (Jakarta: Gunung Agung, 1987).

³⁵ Tri Puspitasari, "Poligami dalam Al-Qur'an (Studi Komparasi Kitab Tafsir Al-Azhar dan Tafsir Fi Zilal Al-Qur'an)". *Thesis*. (Ponorogo: IAIN Ponorogo, 2020).

to neutralize the character of envy, jealousy and complaining in the family. That way, polygamy can only be practiced when in urgent circumstances, for example the wife cannot bear children, the wife is stricken with disease, and can no longer fulfill her obligations. In Islamic belief, a husband and wife's agreement to be faithful to each other and remain as a whole family is spiritual hope and perfection, but spiritual perfection cannot be imposed by the force of law.³⁶

The privilege in the above action, not in the sense of male domination provides for a single wife, because of his inability to have two or three wives. On his own accord but unwilling to commit acts of polygamy. This is because spiritual happiness lies in his attitude of distancing himself from polygamy. In essence, marriage law can only be implemented on the basis of objective facts and in a broad scope by prioritizing the principle of monogamy and not absolutely prohibiting the application of the principle of polygamy. Blocking something that is less than perfect will create a loophole for error, which is to judge everyone as perfect or able to live a perfect way of life.³⁷ As Gustav Radbruch argued, the goal of justice is above any other goal of law because it is in harmony with the main basis or ontology of the law itself. Even the law is formed to create order and prosperity through just legal certainty, that is, the arrangement of opposing interests equally so that everyone gets as much as possible what is rightfully his.³⁸

In the "fair" category, the act of polygamy means not partial, including in meeting needs, such as clothing, food and shelter. The justice advocated in the Qur'an is justice that can be exercised, that is, fair in the

³⁶ Maya Noviana Sari, "Konsep Adil dalam Poligami Menurut Imam Syafi'i dan Imam Malik." *El-Izdiwaj: Indonesian Journal of Civil and Family Islamic Law* 3, no. 4 (2021).

³⁷ Muhammad Arif Mustofa, "Poligami dalam Hukum Agama dan Negara." *Al Ijarah: Jurnal Pemerintahan dan Politik Islam* 2, no. 1 (2018): 47-58.

³⁸ Mario Julyano, and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Credito* 1, no. 1 (2019): 13-22.

distribution of time and providing a living.³⁹ However, regarding justice in terms of loving and cherishing, according to him, including justice that is impossible to do. This does not rule out the possibility of being fair in all respects, including abilities beyond human control.⁴⁰ The causes of disharmonization of the problem, including lust and incomprehension of religion, including inequality in understanding the word of Allah SWT in QS. An-Nisa' (4): 129. From this verse, al-Zamakhshari expressed his opinion that the demand for the ability to act fairly towards wives according to maximum ability, because forcing oneself to do something above its ability includes tyrannical acts. While another opinion of al-Shaukani asserts that, as the effort to do justice, man will not be able, especially if it is correlated with the competence of dividing in the immaterial field. Therefore, God forbids focusing on one that causes the other to be marginalized.⁴¹

Balancing Monogamy and Polygamy: Legal Foundations in Marriage Law

Anwar Rahman in his opinion explained that the principle of monogamy is a principle that applies in marriage law in Indonesia. The principles outlines that a husband is only allowed to have one wife. However, monogamy that prevails in Indonesia is relative or open monogamy, which means that it provides opportunities for someone to practice polygamy with the terms and conditions that apply to the legislation, namely alternative conditions and cumulative conditions.⁴² In

³⁹ Naylatur Rohmah, "Nilai-nilai Keadilan dalam Poligami (Studi Living Qur'an Pada Pelaku Poligami di Kecamatan Balung Kabupaten Jember)." *Thesis*. (Jember: Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2021).

⁴⁰ Wildan Achsan Aziz, "Praktek Keadilan Poligami dengan Alasan Pisah Ranjang Perspektif Hukum Islam: Studi Kasus Kelurahan Kebonsari Kecamatan Jambangan Kota Surabaya". *Thesis*. (Surabaya: UIN Sunan Ampel Surabaya, 2023).

⁴¹ Sukmawati Sukmawati. "Status Hukum Poligami Menurut Pandangan Quraish Shihab dalam Tafsir Al-Misbah". *Thesis*. (Jakarta: Universitas Muhammadiyah Jakarta, 2020).

⁴² Eka NAM Sihombing, and Cynthia Hadita. "Konstitusionalitas Poligami dalam Perspektif Hermeneutika Hukum Islam di Indonesia." *Mahakim: Journal of Islamic Family Law* 5, no. 1 (2021): 11-26.

legal substance Article 1 of the Marriage Law says that marriage is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal home family based on the divinity of the Almighty. Furthermore, Article 3 of the Marriage Law states that in a marriage a man can only have one wife. In other words, the marriage law adheres to the principle of monogamy. This does not apply in the event of circumstances such as where one spouse dies, that the spouse left behind can remarry. However, there is a difference between the Marriage Act and Indonesian Civil Code (*KUH Perdata*) on the basis of monogamy.⁴³

In the Civil Code the principle of monogamy adopted can be seen in Article 27 which states that at the same time, a man is only allowed to have one woman as a wife, and for women only one man as a husband. Thus, Indonesia's marriage law adheres to the principle of monogamy is not absolute, namely polygamy can be interpreted as an alternative structural way in answering social problems.

In essence, marriage is not just about satisfying desires, in which a man can marry more than one woman, but the act is intended to elevate the woman.⁴⁴ Therefore, the existing law is expected to limit people who will marry more than one, because husbands are faced with several conditions, including the approval of court permission and the guarantee that the husband will be fair to his wives and children in the future. Meanwhile, departing from Anwar Rahman's opinion, it is stated that the principle of polygamy, although formally in the Marriage Law adheres to the principle of monogamy, polygamy gets space with the enactment of several articles and verses that regulate it. However, polygamy is not used as a principle in marriage law as applied in Law Number 1 of 1974. This is clearly an exception addressed in the specification to persons who according to law and religion or belief permit the commission of such acts. That is, such a situation is permissible with a fairly heavy scope of

⁴³ Tofan Madiu, "Praktek Poligami dalam Perspektif Hukum Islam." *Lex Privatum* 2, no. 1 (2014): 27-35

⁴⁴ Zamzam Mustofa, et al. "Diskursus Alasan-Alasan Nabi Muhammad Saw Melarang Sahabat Ali Bin Abi Thalib dalam Berpoligami Menurut Iffah Qanita Nailiya." *Inisiasi* 10, no. 2 (2021): 169-178.

responsibility, which is in the form of an understanding of the conditions for certain reasons and court permission.⁴⁵

In juridical practice, polygamy is contained in the Compilation of Islamic Law in force and is used by Muslims as a guide in carrying out the marriage process, it is contained in Article 55 paragraph (1) which states that a man who may marry more than one person at the same time, is limited to only four wives.⁴⁶

Historically, polygamy traces back to the earliest accounts of human existence, with polygamous unions documented since the time of Prophet Adam. One notable instance is the marriage between Qobil and Iglima, the son of Prophet Adam, which occurred when Qobil already had a wife and children. This marriage arose from Qobil's infatuation with Iglima's beauty, leading to tragic consequences when he murdered Habil, who was Iglima's husband.⁴⁷

In contemporary society, if polygamy is pursued solely for the gratification of desires, particularly in the pursuit of status and prestige within today's hedonistic and materialistic culture, disregarding the principles outlined in Islamic law, then its justification becomes untenable. Early instances of polygamy in Islam were not motivated by lust but rather served as a strategic advocacy for widows and orphans.⁴⁸

However, in the current social landscape, the predominant practice of polygamy is often devoid of such noble intentions, serving primarily to fulfill male desires. Consequently, it is apt for authorities and governmental bodies to regulate or prohibit polygamous marriages, given the prevailing social realities.

⁴⁵ Mohammad Irfan Sholeh, "Tinjauan Teoretis Asas Monogami Relatif dalam Undang-Undang No 1 Tahun 1974 dan Kompilasi Hukum Islam". *Thesis*. (Jember: Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2021).

⁴⁶ Arif Zunaidi, "Kedudukan Harta Bersama Perkawanan Poligami." *Mahakim* 2, no. 2 (2018): 91-106.

⁴⁷ Agus Hermanto, "Islam, Poligami dan Perlindungan Kaum Perempuan." *KALAM* 9, no. 1 (2015): 165-186.

⁴⁸ Imam Machali, "Poligami dalam Perdebatan Teks dan Konteks: Melacak Jejak Argumentasi Poligami dalam Teks Suci." *PALASTREN: Poligami dalam Perdebatan Teks dan Konteks: Melacak Jejak Argumentasi Poligami dalam Teks Suci* 8, no. 1 (2015): 35-56.

The practice of polygamy in Islam for some recognized as a concrete solution for some people, little to realize perfection in family life that cannot be achieved by applying the principle of monogamy.⁴⁹ The problem of the absence of the baby that may be caused by the inability of the wife to bear offspring, the dissatisfaction of a husband, or the purpose of da'wah as done by the Prophet SAW is a line of problems that may be solved by this polygamous institution. But what needs to be underlined is not to let efforts to overcome various problems by means of polygamy actually cause greater conflict than the previous problem. If this happens, of course polygamy is not a recommended solution, but instead becomes a tightened prohibition.⁵⁰

The meaning of fair as interpreted by M. Quraish Shihan is that required by verse 3 of QS. An-Nisa' i.e. for husbands who want to practice polygamy is justice in the material field.⁵¹ The justice mandated in the verse is justice in the realm of immaterial (love). This justice is impossible for human abilities to achieve. Therefore, polygamous husbands are required not to express lust and who are passionate and inclined to the beloved. Thus, it is not appropriate to use the verse as an excuse to close the practice of polygamy.⁵²

The important thing that concerns the classic fuqaha in the issue of polygamy is the technicality in the treatment of polygamous wives, namely related to the division of rotating time and bread. In this case, Mustafa Diibul Bigha expressed his opinion in terms of distribution to wives, among others:⁵³

⁴⁹ H. Khoirul Abror. "Poligami dan Relevansinya dengan Keharmonisan Rumah Tangga: Studi di Kelurahan Rajabasa Bandar Lampung". *Research Report*. (Lampung: IAIN Raden Intan Lampung, 2016).

⁵⁰ Imam Faishol, and Diki Ilham. "Keutuhan Pasangan Suami Istri Tanpa Anak: Studi Kasus 2 Keluarga Desa Batuganda Permai." *Syaksia: Jurnal Hukum Perdata Islam* 23, no. 1 (2022): 1-16.

⁵¹ Machali, "Poligami dalam Perdebatan Teks dan Konteks: Melacak Jejak Argumentasi Poligami dalam Teks Suci."

⁵² Irfan Lewa, "Konsep Adil dalam Poligami Perspektif Muhammad Quraish Shihab dan Amina Wadud." *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab dan Hukum* 3, no. 1 (2022): 158-166.

⁵³ Muhammad Zunal Aulawi, "Analisis Pemikiran Ibnu Hazm tentang Konsep Keadilan dalam Poligami". *Thesis*. (Semarang: UIN Walisongo Semarang, 2015).

1. Most scholars agree that it is obligatory to divide the overnight shifts between several wives, Muslim wives or biblis if all parts are equal, but when there are slaves, then free wives get two nights and slave wives one night. Furthermore, opinions differ by Imam Malik who says that both free wives and slaves have the right to equal shares.
2. If they want to travel, they are required to scramble openly between them and have to go out with their lucky wives to get a lottery.
3. Jumhur ulama requires that if a marriage has taken place with a new wife, it should dedicate overnight to her one night, if the wife is a virgin and three nights if she is widowed. Then there is a different opinion from the Hanafi Imam that there is no specific specification for a new wife for polygamy.
4. If there is concern that the wife is becoming rebellious, then she should advise her. If you are still rebelling again, it is necessary to separate the bed, and it is also permissible to make beating actions. The allocation of income, such as eating, drinking, clothing, and shelter does not have to be equal, the most important thing is according to the circumstances (financial), when the husband has given this right it is permissible for him to specialize in one of his wives. But it would be nice to consider the consequences that will occur, for example whether the action can divide the interested or not.

The rationale behind permitting polygamy lies in the principle of fairness, which necessitates the ability to maintain equitable treatment among multiple spouses. However, achieving genuine fairness is a weighty responsibility. Examining the conditions outlined in the Qur'anic verses, it becomes apparent that polygamy is an exception rather than a standard provision. This interpretation is further reinforced by the concluding directive in the verse, which advocates monogamy if the specified conditions cannot be met. Thus, it can be inferred that marrying a single person is preferable, as it fosters inner peace and mitigates the risk of oppression and tyranny.⁵⁴

⁵⁴ Haris Hidayatulloh, "Adil dalam Poligami Perspektif Ibnu Hazm." *Religi: Jurnal Studi Islam* 6, no. 2 (2015): 207-236.

By reflecting on QS. An-Nisa verse 129, "You can never do justice among your wives." Jumbuh tafsir affirms that monogamy is the basic ideology of marriage in Islam as stated in the verse. Of course, it is impossible to bring about justice as the Qur'anic idealism in establishing among them a sense of love and affection (Qs. 30:21), when the husband is concurrently father among more than one family.⁵⁵

Siti Anshariyah argues that Muslim law establishes strict provisions that men must free up equal time for each of his wives in addition to treating his wives equally in financial and other aspects.⁵⁶ Men should not be partial, but should love them equally. Fair qualification becomes a serious demand in such actions. Although in his opinion, Imam al-Shafi'i said, justice is limited to physical matters such as visiting (turning) wives and providing for themselves.⁵⁷ While Wahbah Zihaili in tafsir al-munir said that the qualification of fairness is not only related to the physical, but also in the form of allocation of income and visits as Al-Shafi'i indicated but must also be reviewed in the aspect of the division of love (heart).⁵⁸ By prioritizing the immediate needs of women as essential participants in the marital union, monogamy emerges as the most conducive principle for fostering a harmonious and compassionate family environment, characterized by tranquility, affection, and mercy.

Conclusion

The norms for the implementation of the principle of monogamy are regulated in Article 3 of the Marriage Law. However, opportunities for polygamy can be traced through the *Kompilasi Hukum Islam* as well as the Marriage Law itself. The nature of fairness that is the reason for allowing polygamy is the ability to behave equally. Departing from Anwar

⁵⁵ Apriana Asdin, "Konsep Keadilan dalam Berpoligami dalam Perspektif Hukum Islam dan Hukum Positif." *Jurnal Darussalam: Pemikiran Hukum Tata Negara dan Perbandingan Mazhab* 3, no. 1 (2023): 50-78.

⁵⁶ Mufidah Mufidah (ed). *Isu-Isu Gender Kontemporer dalam Hukum Keluarga*. (Malang: UIN Maliki Press, 2010).

⁵⁷ Nurun Najwah, *Perempuan dalam Pernikahan: Telaah Ulang Wacana Keagamaan*. (Yogyakarta: TH Press, 2008).

⁵⁸ Lilik Umami Kaltsum, "Hak-Hak Perempuan dalam Pernikahan Menurut Wahbah Al-Zuhaili," *Jurnal Studi Gender PALESTREN* 6, no. 2 (2013): 395-420

Rahman's opinion, it is stated that the principle of polygamy although formally in the Marriage Law adheres to the principle of monogamy, polygamy gets space with the enactment of several articles and verses that regulate it. However, polygamy is not used as a principle in marriage law as applied in Law Number 1 of 1974. This is clearly an exception addressed in the specification to persons who according to law and religion or belief permit the commission of such acts. That is, such a situation is permissible with a fairly heavy scope of responsibility, which is in the form of an understanding of the conditions for certain reasons and court permission. In the "fair" category, the act of polygamy means not partial, including in meeting needs, such as clothing, food and shelter. The justice advocated in the Qur'an is justice that can be exercised, that is, fair in the distribution of time and providing a living. In this case, the author argues that there is a need for special regulations governing the application of the principle of marriage carried out to ensure the sovereignty and integrity of a fair marriage. For example, policy formation in each region with a multicultural society. This is carried out by considering the harmonization of existing regulations.

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Men shall take full care of women with the bounties Allah has bestowed on them, and what they may spend out of their possession...

Surah An-Nisa 4: 34

Husbands, love your wives, and be not bitter against them.

Colossians 3:19

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