

## Contextualization of Polygamy Law; Justification of Islamic Legal Principles against Positive Regulations in Indonesia

**Muhammad Nur<sup>1</sup>**

Aceh Tamiang Islamic College, Aceh, Indonesian  
mmuhammadnurr1972@gmail.com

**Dhiauddin Tanjung**

North Sumatra State Islamic University, Medan, Indonesian  
dhiauddintanjung@uinsu.ac.id

Submission	Accepted	Published
Feb 10, 2024	Jul 21, 2024	Jul 31, 2024

### **Abstract**

*Ideally, polygamy law in Islam sets a maximum limit of four wives, requires the husband to act justly, and considers material and emotional factors, as stipulated in the Qur'an. However, in reality, there are differences in the implementation of the law in Indonesia. Law No. 1 of 1974 does not limit the number of wives, while the Compilation of Islamic Law (KHI) limits it to four wives and requires the wife's consent, which must be proven in court. These differences reflect a discrepancy between Islamic legal principles and current positive regulations. This article aims to provide a deeper understanding of the differences between polygamy law in Islam and positive regulations in Indonesia. This research uses a comparative approach with a literature study method to analyze and compare Islamic legal principles with positive regulations in Indonesia related to polygyny. The results show that over time and with changes in the state system, the contextualization of polygamy law has undergone justification and rationalization, leading to significant changes in its application.*

**Keyword:** Polygamy, Contextualization, Positive Law, Islamic Law

### **Abstrak**

Seharusnya, hukum poligami dalam Islam menetapkan batasan maksimal empat istri, kewajiban suami untuk berlaku adil, serta pertimbangan materiil dan emosional, sebagaimana diatur dalam Al-Qur'an. Namun, realitasnya menunjukkan perbedaan dalam penerapan hukum di Indonesia. Undang-Undang No. 1 Tahun 1974 tidak membatasi jumlah istri, sedangkan

---

<sup>1</sup> Corresponding Author

Kompilasi Hukum Islam (KHI) membatasi hingga empat istri dan mewajibkan persetujuan istri yang harus dibuktikan di pengadilan. Perbedaan ini mencerminkan ketidaksesuaian antara prinsip hukum Islam dan regulasi positif saat ini. Artikel ini bertujuan untuk memberikan pemahaman yang lebih mendalam tentang perbedaan antara hukum poligami dalam Islam dan regulasi positif di Indonesia. Penelitian ini menggunakan pendekatan komparatif dengan metode studi kepustakaan untuk menganalisis dan membandingkan prinsip-prinsip hukum Islam dengan regulasi positif Indonesia terkait poligini. Hasil penelitian menunjukkan bahwa seiring dengan perubahan waktu dan sistem negara, kontekstualisasi hukum poligami mengalami justifikasi dan rasionalisasi yang menyebabkan perubahan signifikan dalam penerapannya.

**Kata Kunci:** Poligami, Kontekstualisasi, Hukum Positif, Hukum Islam

## Introduction

The issue of polygamy is a complex and controversial topic within social and religious contexts. Many people believe that polygamy exacerbates the position of women in society and grants greater rights to men (Rubama et al., 2024). This issue arises because, in some religions, particularly Islam, polygamy is permitted. However, it is important to remember that the practice of polygamy is not limited to any specific religion or culture. While in some cases polygamy can be practiced with the agreement of all parties involved, in practice, it often involves oppression and violence against women who become victims of polygamy.

Additionally, polygamy raises many social impacts. In societies that practice polygamy, there is a potential for social injustice and instability within the family. For example, children born from the second or third wife are often considered less valued, and they may have fewer rights compared to children born from the first wife. Moreover, polygamy can worsen a family's economic condition, as a husband must provide for several wives and their children (Heath et al., 2020). Therefore, the issue of polygamy must be examined carefully to find the best solutions for all parties involved.

Ideally, Islamic law on polygamy sets a maximum limit of four wives, the obligation of the husband to be just, and considerations of material and emotional aspects, as outlined in the Qur'an. The concept of polygamy in Islam has indeed been debated among communities for centuries. However, for Muslims, this practice is strictly regulated in the Qur'an. In some cases, polygamy can be practiced if a man meets certain conditions, such as treating all his wives fairly and not neglecting any of them (Khoiriyah, 2017). This practice is designed to protect women's rights and balance the number of available men and women in society.

However, the reality shows differences in the application of the law in Indonesia. Polygamy often suffers from misuse and misinterpretation. It becomes a reason for some men to have more than one partner without considering the rights of women. Law No. 1 of 1974 on Marriage does not limit the number of wives, while the Compilation of Islamic Law (KHI) limits it to four wives and requires proof of consent from existing wives in court. This discrepancy reflects the

mismatch between Islamic legal principles and current positive regulations (Auliani et al., 2021).

In an effort to accommodate a husband's desire to marry more than one partner, Indonesia enacted Law No. 1 of 1974 on Marriage, which includes requirements for practicing polygamy. Alongside this, the Compilation of Islamic Law (KHI) was also established to regulate marriage rules in Islam comprehensively. The KHI contains various provisions and rules regarding marriage, including polygamy, that adhere to Islamic teachings. This ensures that the practice of polygamy is regulated and supervised by law, so it is not practiced arbitrarily by those who do not meet the requirements. Thus, while Islam permits polygamy, it must be practiced in compliance with strict requirements to maintain justice and respect the rights of all parties involved (Zukhdi, 2020).

This research aims to provide a deeper understanding of the differences between Islamic polygamy law and positive regulations in Indonesia. The findings indicate that, with changes over time and the state system, the contextualization of polygamy law has undergone justification and rationalization, leading to significant changes in its implementation. The provisions of Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law have a positive impact on creating harmonious and happy families. With clear regulations and requirements for a husband wishing to remarry, it is hoped to prevent possible abuse of power by the husband. Furthermore, marriage practices based on moral codes also offer valuable life lessons to the participants.

## Literature Review

The discussion of polygamy within the context of Islamic law and positive law is not a new discourse. Numerous researchers have addressed and published on this topic using various methods and approaches. Therefore, it is crucial to describe the position of this research relative to existing works. Darmawijaya, in his article titled; *“Poligami Dalam Hukum Islam dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia dan Indonesia),”* has integrated classical and contemporary scholars' views and analyzed them through the theory of *maslahat mursalah*. This research provides deep insights into the application of polygamy laws and their contribution to legal justice in the Muslim world (Darmawijaya, 2015). This research shares similarities with the author's study by examining polygamy from two legal perspectives. However, while Darmawijaya compares three countries, the author focuses solely on Indonesia.

Mardi, in the article; *“Problematika Hukum Poligami Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia,”* has thoroughly narrated the comparison of polygamy from both Islamic and Indonesian positive law perspectives. By focusing on the prevalence of polygamy practices, this research identifies three views in Islamic law—those that permit polygamy unconditionally, those that prohibit it outright, and those that permit it with specific conditions—and compares them with the provisions of Law No. 1 of 1974 in Indonesia. This finding reveals the alignments and significant differences in the application of legal requirements, providing profound insights into the enforcement of polygamy in Indonesia (Mardi, 2019). This research shares similarities with the author's study

on polygamy in Indonesia from both Islamic and positive law perspectives. The difference lies in Mardi's focus on exploring issues found, while the author leans more towards logical reasoning and contextualization.

Ahmad and Mustofa, in their publication; *"Menyoal Kontekstualisasi Hukum Islam tentang Poligami,"* systematically present the reform of Islamic law, particularly regarding polygamy. This work argues that polygamy is not the primary mission of Islam, but rather monogamy aligns more closely with Islamic teachings. Using a contextual interpretation approach and the principle of *maslahat*, the research concludes that texts that seem to permit polygamy are actually strategies to gradually phase it out. However, this work also identifies shortcomings in contextual studies that tend to justify the dominant discourse on gender equality (Fata & Mustofa, 2013). This publication shares similarities with the author's study in the variable of 'contextualization of polygamy.' The difference is that while Ahmad focuses on general contextualization, the author focuses on comparing polygamy laws in Indonesia.

The three works mentioned are among the most aligned with the author's study. After an in-depth review and exploration of numerous other works, the author's analysis indicates that no publication has yet structured and coherently examined *"Contextualization of Polygamy Law: Justification of Islamic Legal Principles in Relation to Positive Regulations in Indonesia."* This indicates that this research holds originality and novelty.

## **Research Method**

This research adopts a qualitative approach with a literature study method to explore and analyze polygamy law from the perspectives of Islamic law and positive law in Indonesia. The research gathers data from primary legal sources, such as the Qur'an, Hadith, and relevant legislation, as well as academic literature and related legal documents. The analysis process involves a thorough examination of these texts to understand the differences and similarities in the application of polygamy laws between Islamic law and positive regulations in Indonesia. Consequently, this research assesses how the principles of Islamic law are interpreted and implemented within the context of Indonesian positive law.

## **Polygamy in Historical Context**

Polygamy is the practice of having more than one spouse simultaneously, with specific terms depending on the type of polygamy practiced. In the context of marriage, polygamy is usually divided into two main categories: polygyny and polyandry. Polygyny is a form of polygamy where a man marries multiple women, whereas polyandry is a form where a woman marries multiple men. Polygamy can involve various social, economic, or cultural reasons, and its application varies significantly across different societies and historical periods. In many legal systems and cultures, polygamy is regulated with specific rules and limitations (Mamnuniyatilah & Andaryuni, 2022). For example, Islamic law permits polygamy under certain conditions, such as treating all wives fairly and limiting the number of wives to four. On the other hand, many modern countries and contemporary

societies have restricted or prohibited polygamy, citing reasons such as gender equality, individual rights, and other social considerations.

Polygamy has been part of the social and legal history in various parts of the world, including within the context of Islamic history. Understanding polygamy from a historical perspective requires a deep exploration of the cultural, social, and legal backgrounds that shaped this practice. In early human civilizations, polygamy was widely known and practiced as part of social and cultural norms. In ancient civilizations such as Egypt, Mesopotamia, and Greece, polygamy was often practiced for social and economic reasons. In Mesopotamia, for instance, polygamy was used as a means to expand social and political alliances and to ensure lineage (Hamim & Faisal, 2022). This practice was often related to wealth and social status, with elite or ruling men having multiple wives as a symbol of power and prosperity.

In the context of Islamic history, polygamy is strictly regulated in the Qur'an. During the early spread of Islam in the Arabian Peninsula, polygamy was a common and socially accepted practice. The Qur'an sets limitations on polygamy in Surah An-Nisa (4:3), allowing men to have up to four wives provided they treat each wife justly. This regulation was a response to the social and political conditions of the time, where many widows and orphans required protection and support. By setting these limits, Islam sought to provide fair rights to women and ensure equitable treatment within households (Amirulkamar et al., 2023).

However, despite Islamic law's limitations on polygamy, the interpretation and application of this law have evolved over time. During the Umayyad and Abbasid dynasties, polygamy continued to be widely practiced, but there were also efforts in certain periods to limit and reform this practice. For example, during the Ottoman Caliphate, Islamic family law underwent more modern adjustments with certain restrictions on polygamy. With changing times and evolving social thought, many Muslim countries began to adapt their implementation of polygamy laws. In the colonial and post-colonial eras, many countries started adopting legal reforms that aligned with modern social contexts. For instance, countries like Turkey and Tunisia implemented reforms that limited or even banned polygamy in their positive laws as part of modernizing their legal and social systems (Darmawijaya, 2015).

In the Indonesian context, the practice of polygamy has undergone significant changes from the colonial period to the present day. During the Dutch East Indies era, customary law and Islamic law were applied concurrently, with polygamy being widely accepted as part of customary law. However, with Indonesia's independence and the establishment of national laws, such as Law No. 1 of 1974 on Marriage, there has been an effort to regulate and restrict the practice of polygamy with strict conditions (Ardhian et al., 2016). This law reflects an attempt to balance Islamic legal principles with social needs and individual rights in Indonesia.

Overall, polygamy reflects the dynamic relationship between social norms, religious laws, and legal reforms. Changes in the practice and regulation of polygamy demonstrate how societies adapt to social and legal transformations, striving to achieve a balance between tradition and modernity. As discussions and

reforms on polygamy continue, it is crucial to examine how this practice can be aligned with principles of justice and equality in the future.

### **Polygamy in Islamic Law**

In Islam, polygamy is permitted, but it comes with restrictions and does not obligate its adherents to practice monogamy exclusively. This means that men are allowed to marry more than one woman, provided that certain conditions are met. Although Islam recognizes heterosexuality as the norm, polygamy is allowed under specific circumstances. Generally, a man is allowed to have up to four wives at one time, and this provision is also applicable to women. However, Islam does not mandate that men must practice polygamy, and this practice is not universally required for all men (Husaidi et al., 2020). Not all men have the capacity or inclination to enter into multiple marriages. Therefore, while some men are permitted to practice polygamy, it does not imply that all men must do so, as not all possess the ability to fulfill the responsibilities associated with multiple marriages.

*Firstly*, a man is allowed to have no more than four wives at one time. If one of the wives passes away or if the marriage is dissolved, the man is free to replace her with another woman, up to the total limit of four. *Secondly*, a man must be capable of treating his family members fairly in terms of financial support, time allocation, and child-rearing duties. While striving for fairness, it is acknowledged that no human can achieve perfect justice in all aspects of life, including emotional and mental health (Juita et al., 2017). Polygamy in Islam is viewed as an option, particularly to address sexual needs and to prevent behavior that is considered immoral or prohibited by the religion.

Additionally, it can serve as a solution to other issues that may cause emotional stress for a husband, such as an inability of the wife to conceive or physical disabilities that affect normal sexual relations. In such cases, polygamy is seen as a permissible means to maintain family cohesion and uphold religious sanctity. Despite its allowance, polygamy in Islam is not without prerequisites. A husband seeking to practice polygamy must meet several conditions, such as treating each wife equitably and addressing material aspects like financial support and the distribution of time. A husband must ensure he can fulfill all these requirements before deciding to enter into multiple marriages. Failing to do so may lead to new problems and potentially damage the relationships between husband and wife, which in turn could affect family stability and social harmony (Yasin, 2018).

A husband is not allowed to practice polygamy if he fears that he will fail to meet the legal rights of his spouses or if he cannot provide adequately for more than one or two wives. For example, it is impermissible for a man to have more than two wives if he can only financially support two. Similarly, polygamy is inappropriate if a man is certain that he will be unjust in his treatment of two or more wives. As mentioned in a hadith from the Prophet Muhammad (peace be upon him);

عن أبي هريرة أن النبي صلى الله عليه وسلم قال: من كانت امرأتان فمال إلى أحدهما جاء يوم القيامة وشقه مائل (رواه أبو داود والترمذي والنسائي وابن حبان)

The hadith provides a stern warning to a husband with two wives, advising against unfair treatment and the imposition of excessive burdens on one of them. It states that if a person treats one wife better than the other or places undue hardship on one, he will come on the Day of Judgment with a lopsided back, symbolizing the severity of the punishment he will face (Syahriza, 2018). This hadith underscores the importance of justice and equality in treating one's wives. A husband must ensure that he treats each wife fairly and fulfills their rights and duties equally. If a husband cannot fulfill his responsibilities justly towards two wives, it is advisable for him to refrain from marrying additional wives and to remain with one wife. Therefore, this hadith serves as a reminder to Muslims to maintain fairness in treating their spouses and to avoid unjust treatment that could lead to severe consequences in the Hereafter. Aisha (RA) said:

كان رسول الله صلى الله عليه وسلم يقسم فيعد ويقول: اللهم هذا قسمي فيما املك فلا تملك فلا تلمني فيما تملك ولا املك قال أبو داود يعني القلب

The hadith describes how the Prophet Muhammad (peace be upon him) treated his wives with fairness in terms of time distribution. He prayed to Allah to grant him the ability to fulfill his responsibilities fairly and to be excused for what he could not accomplish. In this context, "*You can only control what is in your heart*" can be interpreted as the internal state of a person that is difficult to control entirely. The Prophet Muhammad (peace be upon him) recognized that humans have limitations in controlling their feelings, emotions, and desires, so he prayed to Allah not to be held accountable for things beyond his control (Zulyadain, 2019).

This hadith also highlights the importance of fairness and harmony in a relationship, even in a marital context. The Prophet Muhammad (peace be upon him) divided his time fairly among his wives and strived to meet his responsibilities optimally. Therefore, this hadith can serve as an example for Muslims to treat their partners fairly and to support each other in fulfilling their respective responsibilities (Syam & Syachrofi, 2019). Al-Khattabi emphasizes that this hadith illustrates the importance of treating independent wives justly. If a husband infringes upon their rights, such as reducing their entitlements, it is considered unwise.

However, this hadith also indicates that even though a husband must treat his wives fairly, it does not prevent the couple from loving each other. In other words, the husband and wife are still expected to love one another, even as the husband must treat each wife fairly. This suggests that justice in marriage does not necessarily mean the absence of love but should be an integral part of how partners love and respect each other. Additionally, Al-Khattabi explains that it is inadvisable to deal with women in ways contrary to Islamic teachings, as women are subjects of compassion and should not be treated harshly (Zulyadain, 2019).

A husband should randomly select one of his wives to accompany him on a business trip. Khattabi argues that the Prophet Muhammad (peace be upon him) exemplified this practice. The timing for this can be either day or night, depending on the need. The granting of turn rights is analogous to property rights. Most scholars agree that a wife traveling with her husband does not lose her turn at home due to the length of the trip. The days spent away from home are merely added to or replaced by other days. Almost all scholars agree that a woman traveling with her husband does not experience a loss of extra shifts or her days being used are added and replaced with other days.

On the other hand, some scholars believe that the days spent away are accumulated and swapped with others, resulting in a reduction of shifts and repetition. Since the first view has become the scholarly consensus, it is certainly correct (Ardhian et al., 2016). Additionally, although a wife may travel longer with her husband, she must still endure significant pain and sorrow. This further contradicts the concept of justice, as comparing them means abandoning the notion of fairness. The following hadith highlights this goal by acknowledging a wife's legitimate right to refuse her turn with her husband during a trip so that she may allow other wives to go on vacation. It is mentioned in a hadith:

كان رسول الله صلى الله عليه وسلم. اذا سفر اقرع بين نسائه فايتهم خرج سهمها خرج بها معه وكان وكان يقسم بكل امرأة منهن يوماً غير ان سودة بنت زمعة وهبت يوماً لعاثشة

This hadith illustrates how the Prophet Muhammad (peace be upon him) treated his wives fairly and equally in terms of time distribution. When he wanted to travel, he would conduct a lottery among his wives to determine who would accompany him on the trip. Similarly, for the time he spent with his wives, he rotated his time among them on specific days. However, there was one exception where he gave Aisha the choice to select her day, while Sauda bint Zam'a's share was given to Aisha. Despite this, the time distribution was still done fairly, with no wife receiving more than the others. In this context, the hadith teaches the importance of fairness and equality in treating wives. A husband must treat his wives fairly and give each wife equal rights and responsibilities. The Prophet Muhammad (peace be upon him) exemplified a fair and equitable approach in treating his wives, and this hadith can serve as a model for Muslims to treat their partners justly and equally in terms of time, attention, affection, and other rights and duties (Syahriza, 2018).

If a partner has daytime work, they should take turns sleeping at night. They should also spend the night with one wife every two or three days if they work at night and then have their turn during the day. If he is already with one wife, he cannot start with another unless there is an extreme emergency, such as the first wife being ill or in danger. In such cases, he is allowed to visit his wife at home even if he is on rotation with another wife. Similarly, if the partners agree to this arrangement (Fata & Mustofa, 2013). Additionally, a husband is allowed to visit his wife during the day when it is not his turn if he is just storing items or providing financial support, but he is not permitted to engage in sexual relations. At minimum, each wife is responsible for one night, and she may be responsible for

three nights. It is important to ensure that this does not exceed three nights per day to avoid 'taking over' from the other partners. If a wife's turn extends beyond three days, it indicates that he has deprived the rights of others, signifying that he has violated the rules.

Polygamy in Islamic law not only regulates the division of time but also addresses how a husband should meet the basic needs of his wives. A husband with more than one wife must fulfill his obligations fairly and provide for each wife according to her needs, without unequal distribution. It is important to note that the requirement for fairness refers to the interpretation of the verse from Surah An-Nisa (4:3). Therefore, a husband must fulfill these duties wholeheartedly and with fairness to achieve happiness and well-being in the family (Zulfikar, 2022). This verse regulates marriage and how a Muslim should treat his wives. It indicates that when a Muslim wants to marry and fears that he will not be able to treat all his wives fairly, he should marry only one woman.

However, if he can treat several wives fairly, he is allowed to marry up to four women. He must treat all his wives fairly, giving them equal rights and not favoring any one of them. If he cannot treat multiple wives fairly, he should marry only one woman or remain unmarried. This shows the importance of justice in marriage and that Islam emphasizes the need for fair and wise treatment of one's spouse, whether in one marriage or more. Furthermore, to ensure fairness in meeting the needs of his wives, a husband who marries more than one woman must provide adequate clothing, food, and shelter for each wife (Anzaikhan et al., 2023). However, it is important to note that fairness in this obligation does not always mean giving the same or equal things to each wife, as the concept of fairness in this rule has been defined and does not necessarily equate to equal distribution, as indicated in the following maqolah:

وضع شيئ في موضع العدل

Justice is a fundamental principle in Islam and is relevant to many areas of life, including the relationship between humans and Allah, human interactions, and how humans treat the environment. In the context of marriage, justice or 'adl is understood as giving equal rights to all wives and treating them with love, honesty, and fidelity. Therefore, if someone fears that they cannot treat all their wives fairly, they should limit themselves to one wife as a form of justice to that wife. However, justice also means giving equal rights to others who deserve them, such as orphans, the poor, and others (Auliani et al., 2021). Thus, the principle of 'placing things in their proper place' can be applied in a broader context, where justice and wisdom in treating others is a necessity. In Islam, the principle of justice is one of the five fundamental principles of living, along with faith, humanity, equality, and decency.

Therefore, a husband's provision for his wives in terms of clothing, food, and shelter does not have to be the same. It is important for a husband to consider priorities when providing financial support to his wives. It is advisable to allocate more support to the first wife compared to the second wife. This is because the first wife may have children and additional needs. In contrast, the second wife, who may not have children, does not have the same needs in this regard.

Therefore, financial support should be given with consideration of each wife's needs fairly, taking into account the different conditions and situations between the first and second wives.

### **Polygamy in Positive Law**

Polygamy, although often regarded as a controversial practice, has a legal basis recognized under Indonesian positive law. The legal framework in Indonesia provides detailed regulations on how polygamy can be practiced within the context of the national law. To fully understand polygamy under Indonesian positive law, it is essential to examine the history, regulations, and requirements governing this practice. The history of polygamy regulation in Indonesia is closely linked to the social and political dynamics that have evolved since the pre-independence era (Mardi, 2019). During the colonial period, customary law and Islamic law coexisted, with polygamy widely accepted in both indigenous societies and Muslim communities. However, with Indonesia's independence and the formation of a modern state, there was a need to draft regulations that were more uniform and aligned with principles of justice and equality.

Law No. 1 of 1974 on Marriage is a significant milestone in the regulation of polygamy in Indonesia. This law establishes that marriage is essentially monogamous, but polygamy is permitted under strict conditions. Article 3, paragraph (2) of Law No. 1/1974 states that a husband may have more than one wife if agreed upon by the parties involved, but must meet certain conditions set forth in the law. The conditions for practicing polygamy in Indonesia are further detailed in Articles 4 and 5 of Law No. 1/1974. *Firstly*, there must be consent from the existing wives, which must be given in writing and acknowledged by the Religious Court. *Secondly*, there must be assurance that the husband can provide for the living needs of his wives and their children. *Thirdly*, there must be assurance that the husband will treat his wives and children fairly. If these conditions are not met, the application for polygamy may be rejected by the court (Husaidi et al., 2020).

Additionally, the Compilation of Islamic Law (KHI), enacted through Presidential Instruction No. 1 of 1991, provides further guidelines on polygamy within the context of Islamic law in Indonesia. KHI stipulates that a husband wishing to practice polygamy must obtain permission from the Religious Court and meet additional requirements such as having valid reasons according to religious law. These reasons may include the wife being unable to fulfill her marital duties, suffering from a physical disability or incurable illness, or being unable to bear children (Yasin, 2018). Positive law in Indonesia also strictly regulates the fair division of time and essential needs for wives. A husband who practices polygamy is required to fairly divide his time between his wives. This includes the time spent with each wife, both in terms of cohabitation and emotional support. These regulations aim to ensure that no wife feels neglected or treated unfairly.

In addition to time allocation, positive law also regulates the fair distribution of essential needs. A husband who practices polygamy must ensure that all his wives and their children receive their basic needs fairly and equitably. These needs include food, shelter, clothing, education, and health care. Positive law

emphasizes that a husband's inability to meet these basic needs can be grounds for the Religious Court to reject a polygamy application. The application of polygamy law in Indonesia also reflects efforts to balance justice, gender equality, and the protection of individual rights (Khoiriyah, 2017). Although polygamy is permitted, existing laws and regulations strive to ensure that this practice is carried out responsibly and does not harm the parties involved. The Religious Court plays a crucial role in assessing and overseeing polygamy applications, ensuring that all requirements are met and that decisions are fair to all parties.

However, despite the legal framework regulating polygamy, the practice remains a subject of debate in society. Many argue that polygamy can lead to injustice and discrimination against women. There is also the view that polygamy is inconsistent with gender equality principles increasingly recognized in international and national law. Regarding the limitation on the number of wives in Indonesian positive law, this can be viewed from the perspective of contextualization and adaptation to social dynamics. Polygamy, which is limited to four wives under Islamic law with the requirement of fairness, has undergone adaptation in Indonesian positive regulations to accommodate social and legal developments. Indonesian regulations, as outlined in Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), do not explicitly limit the number of wives to four (Khoiriyah, 2017).

However, these laws establish various strict requirements and procedures that must be met for practicing polygamy, including consent from existing wives, proof of financial capability, and permission from the Religious Court. These measures are taken to ensure that the principles of justice in Islamic law are maintained and to prevent the misuse of polygamy. In this context, the lack of a limit on the number of wives in positive regulations does not mean ignoring Islamic principles but represents an adaptation to address practical situations and legal complexities in modern society. The stricter regulations aim to balance religious traditions with evolving social needs, ensure the protection of women's rights, and prevent the misuse of polygamy. In modern reality, having more than one wife under positive legal conditions is more challenging than having four wives under classical regulations. This is done to ensure that the standard for four wives is not undermined by parties seeking to act unfairly.

### **Contextualizing Polygamy: A Justification**

Polygamy is a practice recognized and regulated in various legal systems, including Islamic law. In Islam, polygamy is permitted with specific limitations and conditions intended to protect the rights of all parties involved. Essentially, Islamic law on polygamy is based on several verses in the Quran, particularly Surah An-Nisa, verse 3, which states that a man may marry up to four women as long as he is able to be fair to them. This fairness includes the division of time, attention, and material needs. However, the condition of fairness is often a critical point, as achieving fairness in this context is considered very challenging by many scholars. Islamic history records that polygamy was practiced by the Prophet Muhammad (peace be upon him) and his companions for various reasons, including protecting war widows and strengthening social ties (Hendri, 2018).

However, the primary goal of this teaching is to ensure protection and justice for all wives and to prevent oppression and injustice. In this context, polygamy is not the primary objective but rather a solution under specific circumstances. Thus, polygamy in Islam can be seen as a mechanism adopted in special situations to achieve broader social goals, such as the protection and welfare of women. When Islam entered Indonesia and became the majority religion, the practice of polygamy was also adopted by society. However, over time, the interpretation and application of polygamy law in the context of a modern state like Indonesia have undergone contextualization (Keri et al., 2022). Indonesian positive law strives to remain faithful to the fundamental principles of Islamic law while adapting to social changes and developments. This process of contextualization demonstrates that Indonesian positive law does not conflict with the fundamental principles of Islamic law but rather adjusts them to the social context and changing times.

Law No. 1 of 1974 on Marriage is a product of positive law that regulates polygamy in Indonesia. This law essentially acknowledges the fundamental principles of Islamic law but adds stricter conditions to ensure that polygamy is carried out responsibly. One important condition added is fairness in the division of time, attention, and material needs among the wives. Indonesian positive law emphasizes that a husband who practices polygamy must be fair in dividing his time between his wives (Sufrizal et al., 2022). This includes the time spent with each wife, both in terms of cohabitation and fulfilling emotional needs. These regulations aim to ensure that no wife feels neglected or unfairly treated. Regarding essential needs, positive law stipulates that a husband practicing polygamy must ensure that all his wives and their children receive their basic needs fairly and equitably.

These needs include food, shelter, clothing, education, and healthcare. A husband's inability to meet these basic needs can be grounds for the Religious Court to reject a polygamy application. Thus, this contextualization demonstrates that the law can adapt to changing times without disregarding fundamental religious principles. The process of contextualizing polygamy from Islamic law to positive law reflects an effort to balance religious tradition with modern principles of human rights and gender equality. Although polygamy is permitted in Islam, Indonesian positive law strives to ensure that this practice is conducted responsibly and justly (Mamnuniyatilah & Andaryuni, 2022). This means that positive law not only adopts the fundamental principles of Islamic law but also considers social context and changing times. It is important to ensure that polygamy is not used as a tool for oppressing or exploiting women but rather as a means to achieve justice and welfare for all involved parties.

The justification of polygamy within the context of Islamic law and Indonesian positive law shows that while polygamy is permitted, its implementation must be done responsibly and within the framework of justice. In Islam, the requirement for fairness is crucial, and this is adopted in Indonesian positive law with additional detailed regulations. Thus, this contextualization shows that Indonesian positive law seeks to ensure that the practice of polygamy is conducted in a manner that is fair and consistent with internationally recognized principles of justice and equality (Mardi, 2019).

Overall, the contextualization of polygamy from Islamic law to positive law in Indonesia is a dynamic and ongoing process. This process reflects an effort to ensure that the practice of polygamy is carried out fairly and in line with internationally recognized principles of justice and equality. With the continued development of awareness about women's rights and the importance of gender equality, discussions on polygamy and its implementation in Indonesia are likely to continue, prompting further improvements and adjustments in laws and social practices. This contextualization reflects an effort to ensure that the law can evolve and adapt to changing times without disregarding fundamental religious principles.

## Conclusion

Polygamy, as one of the practices regulated in Islamic law, has undergone contextual changes in its implementation in line with social and legal developments in Indonesia. Islamic law, which permits polygamy under conditions of fairness and protection of women's rights, faces challenges when confronted with Indonesia's more stringent and structured positive regulations. Indonesian positive regulations, as outlined in Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), establish various conditions and procedures that must be met for practicing polygamy. These conditions include obtaining consent from existing wives, proving financial capability, and obtaining permission from the Religious Court.

These measures are taken to ensure that the principle of justice in Islamic law is maintained and to prevent the abuse of polygamy that could harm women and children. The contextualization of polygamy law from Islamic principles to Indonesian positive regulations reflects an effort to balance religious tradition with modern social needs. The stricter regulations do not contradict Islamic law (including the limit of 4 wives) but rather represent an adaptation to ensure that the fundamental principles of justice and protection of women's rights are preserved in an evolving society. Thus, the justification of Islamic legal principles in relation to Indonesian positive regulations on polygamy can be seen as a progressive step to align the law with existing social dynamics.

## References

- Amirulkamar, S., Iskandar, I., Zuhrah, F., & Anzaikhan, M. (2023). Administration Reagent of Aceh Family Law Qanun: Siri Marriage Motives Towards the Legality of Polygyny. *De Jure: Jurnal Hukum Dan Syar'iah*, 15(1), Article 1. <https://doi.org/10.18860/j-fsh.v15i1.21352>
- Ardhian, R. F., Anugrah, S., & Bima, S. (2016). Poligami dalam Hukum Islam dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligam di Pengadilan Agama. *Privat Law*, 3(2), 164461.
- Auliani, F., Layyina, U., Arrisha, M., & Nisa, H. (2021). Poligami dan Ketahanan Keluarga Masyarakat Aceh. *Musāwa; Jurnal Studi Gender Dan Islam*, 20(1), Article 1. <https://doi.org/10.14421/musawa.2021.201.59-68>

- Darmawijaya, E. (2015). Poligami Dalam Hukum Islam dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia dan Indonesia). *Gender Equality: International Journal of Child and Gender Studies*, 1(1), Article 1. <https://doi.org/10.22373/equality.v1i1.621>
- Fata, A. K., & Mustofa, M. (2013). Menyoal Kontekstualisasi Hukum Islam tentang Poligami. *Al-Ulum*, 13(2), Article 2.
- Hamim, A., & Faisal, A. (2022). Perbandingan Penerapan Hukum Keluarga Di Mesir Dan Di Indonesia. *As-Syams*, 3(2), Article 2. <https://ejournal.iaingorontalo.ac.id/index.php/AS-SYAMS/article/view/312>
- Heath, R., Hidrobo, M., & Roy, S. (2020). Cash transfers, polygamy, and intimate partner violence: Experimental evidence from Mali. *Journal of Development Economics*, 143, 102410. <https://doi.org/10.1016/j.jdeveco.2019.102410>
- Hendri, A. (2018). Poligami Perspektif Kitab al-Tafsīr al-Wasīl li al-Qurʻān al-Karīm. *Al-Bayan: Jurnal Studi Ilmu Al- Qurʻan dan Tafsir*, 3(1), Article 1. <https://doi.org/10.15575/al-bayan.v3i1.3128>
- Husaidi, H., Andika, S., Trisdiani, C., Hasan, K., & Maulida, D. (2020). Pro-Kontra Wacana Pelegalan Poligami Dalam Aturan Daerah (Qanun) Di Tanah Rencong Aceh. *Source: Jurnal Ilmu Komunikasi*, 6(2), Article 2. <https://doi.org/10.35308/source.v6i2.2598>
- Juita, R., Muhammad, R. A., & Jauhari, I. (2017). Kajian Yuridis Pernikahan Melalui Qadhi Liar (Studi Penelitian di Kabupaten Aceh Besar). *Syiah Kuala Law Journal*, 1(2), Article 2. <https://doi.org/10.24815/sklj.v1i2.8476>
- Keri, I., Misbahuddin, D., & Haddade, D. W. (2022). Kontekstualisasi Teologi Keadilan Dalam Hukum Qishash Dan Poligami. *Al-Syakhshiyah; Jurnal Hukum Keluarga Islam Dan Kemanusiaan*, 4(2), Article 2. <https://doi.org/10.30863/as-hki.v4i2.2950>
- Khoiriyah, S. L. (2017). Pemikiran Nasr Hamid Abu Zaid Tentang Poligami Dan Relevansinya Dengan Undang-Undang No.1 Tahun 1974 Tentang Perkawinan. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 10(1), Article 1. <https://doi.org/10.14421/ahwal.2017.10103>
- Mamnuniyatilah, M., & Andaryuni, L. (2022). Hukum Keluarga di Tunisia: Sebuah Studi Kepustakaan. *Jurnal Tana Mana*, 3(2), Article 2. <https://doi.org/10.33648/jtm.v3i2.321>
- Mardi. (2019). Problematika Hukum Poligami Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia. *Al-Ibrah: Jurnal Pendidikan Dan Keilmuan Islam*, 4(2), Article 2.
- Rubama, Rasyidin, Abdillah, M. A., & Hasan, M. R. (2024). Taik Sangka in Gayo Customary Law: The Urf Approach and Its Implications. *AJIL: Aceh Journal of Islamic Law*, 1(1), Article 1.
- Sufrizal, Azmi, U., & Anzaikhan, M. (2022). Pro dan Kontra Usia Perkawinan pada Undang-Undang Nomor 16 Tahun 2019 Pasca Revisi Undang-Undang Nomor 1 Tahun 1974 dalam Perspektif Islam. *Jurisprudensi: Jurnal Ilmu Syariah, Perundangan-Undangan Dan Ekonomi Islam*, 14(1), Article 1. <https://doi.org/10.32505/jurisprudensi.v14i1.5378>

- Syahriza, R. (2018). Analisis Teks Hadis tentang Poligami dan Implikasinya. *Al-Quds: Jurnal Studi Alquran dan Hadis*, 2(2), Article 2. <https://doi.org/10.29240/alquds.v2i2.471>
- Syam, M. M., & Syachrofi, M. (2019). Hadis-Hadis Poligami (Aplikasi Metode Pemahaman Hadis Muhammad al-Ghazali). *Diroyah: Jurnal Studi Ilmu Hadis*, 4(1), Article 1. <https://doi.org/10.15575/diroyah.v4i1.6018>
- Yasin, D. T. (2018). Menelisik Pesan Sosial Poligami dalam KHI. *Jurnal Al Himayah*, 2(1), Article 1. <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/581>
- Zukhdi, D. M. (2020). Transformasi Poligami Dalam Bingkai Syari'at Islam Di Aceh. *TAQNIN: Jurnal Syariah dan Hukum*, 2(1), 15–25. <http://dx.doi.org/10.30821/taqnin.v2i1.7434>
- Zulfikar. (2022). Perempuan Dalam Hukum Keluarga Islam; Zakir Naik Perspektif. *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan*, 9(1), Article 1. <https://doi.org/10.32505/qadha.v9i1.4197>
- Zulyadain, Z. (2019). Poligami; antara Tuntunan Syara' dan Problem Sosial: Studi Kasus dalam Rumah Tangga di Kota Palopo. *Tasamuh: Jurnal Studi Islam*, 11(2), Article 2. <https://doi.org/10.47945/tasamuh.v11i2.164>