

The Gendered Politics of Maslahah: Patriarchal Tendencies in the Legal and Judicial Justification of Polygamy

Fatma Amilia*, Faiq Tobroni*, Hamam Burhanuddin**, Hana Zaida Salwa***

*Universitas Islam Negeri Sunan Kalijaga Yogyakarta

**Universitas Nahdlatul Ulama Sunan Giri

***MTsN 1 Daerah Istimewa Yogyakarta

Email: fatma.amilia@uin-suka.ac.id

Abstract: Polygamy is a controversial issue. Its existence is justified on the grounds of welfare (*maslahah*). However, the concept of *maslahah* is often interpreted in a biased manner that favors men. This article poses two questions. Firstly, why does the interpretation of public welfare that disadvantages women occur in polygamy law? Second, what are the ideal conditions for polygamy based on the interpretation of public welfare in the Qur'an? The research employs qualitative methods, a critical discourse analysis approach, and theories of patriarchy and power relations. Data collection includes a literature review of scientific articles, books, and legal documents related to polygamy in Indonesia. The findings reveal that patriarchal discourse on polygamy has shaped the meaning of *maslahah*. The spirit of *maslahah* is overshadowed by patriarchal power relations. State power, culture, and discourse have shaped these relations. State legal products in the form of regulations and judicial decisions demonstrate that the state acts as an agent of patriarchy, legalizing the concept of *maslahah* to benefit men. Culture further reinforces the discourse of *maslahah* that harms women. This article proposes a reinterpretation of the concept of *maslahah* as a consideration for polygamy, in line with the objectives of the Qur'an. The consideration of public welfare must shift from individual and biological interests to social ones. The conditions for polygamy must change, not based on the wife's infertility or physical disabilities. Instead, they should be based on the woman to be married, with the condition that she must be a widow with children as paternal orphans.

Keywords: Polygamy, Patriarchy, *Maslahah*, Power Relations.

Abstrak: Poligami merupakan isu yang kontroversial. Keberadaannya mendapat legitimasi dengan alasan kemaslahatan. Namun, konsep kemaslahatan sering mendapat tafsir bias yang menguntungkan laki-laki. Artikel ini mengajukan dua pertanyaan. Pertama, mengapa pemaknaan kemaslahatan yang merugikan perempuan terjadi dalam hukum poligami? Kedua, bagaimana syarat poligami yang ideal berdasarkan pemaknaan kemaslahatan dalam Al-Qur'an? Penelitian

menggunakan metode kualitatif, pendekatan analisis wacana kritis, dan teori patriarki serta relasi kuasa. Pengumpulan data berasal dari literatur review seperti artikel ilmiah, buku, dan dokumen hukum yang berkaitan dengan poligami. Hasilnya menemukan bahwa diskursus yang bias patriarki pada poligami telah membentuk makna kemaslahatan. Spirit kemaslahatan berada di bawah bayang relasi kuasa patriarki. Kekuasaan negara, budaya dan wacana telah membentuk relasi tersebut. Produk hukum negara dalam bentuk regulasi maupun judikasi memperlihatkan negara menjadi agen patriarki yang melegalkan konsep kemaslahatan untuk menguntungkan laki-laki. Budaya turut memperkuat wacana kemaslahatan yang merugikan perempuan. Artikel ini mengusulkan pemaknaan ulang atas konsep kemaslahatan sebagai pertimbangan poligami, yang sesuai dengan tujuan Al-Quran. Pertimbangan kemaslahatan harus berubah dari kepentingan individual dan biologis menjadi sosial. Syarat poligami harus berubah, bukan berada pada kondisi istri yang tidak subur atau cacat fisik. Tetapi pada perempuan yang akan dinikahi, dengan syarat harus janda yang mempunyai anak yatim.

Kata kunci: Poligami, Patriarki, *Maslahah*, Relasi Kuasa.

Introduction

Polygamy is an issue that remains controversial in Indonesian society, both socially, legally, and religiously. As a country with a Muslim majority, polygamy receives strong support as it is considered part of Islamic teachings according to QS An-Nisa: 3. Polygamy continues to be protected by law because it is considered beneficial. The concept of *maslahah* in Islamic law aims to create justice and welfare. However, the practice of *maslahah* in polygamy is often interpreted in a gender-biased manner. As a result, it prioritizes the interests of men and ignores the rights of women. The findings of Hasan (2022) are in line with this, showing that many interpretations of religious texts contain patriarchal bias. This model of interpretation leads to an unfair interpretation of the verses of the Qur'an towards women. Patriarchal interpretations reinforce the narrative that women are objects in marital relationships. This interpretation of *maslahah*

actually ignores the substantive justice that is actually encouraged in Islam¹.

Judicial review of polygamy regulations through Constitutional Court Decision Number 12/PUU-V/2007 confirmed that polygamy regulations are constitutional. The reason is that polygamy serves the goal of *maslahah*². This Constitutional Court ruling reinforces the narrative that *maslahah* is often the main reason for justifying male dominance over women in marital relationships. This ruling is only a partial reflection of the patriarchal power relations that are deeply rooted in Indonesian marital law. The concept of *maslahah* as a consideration for permitting polygamy has become a constant threat to women and children from previous marriages³.

Muslihun's (2018) study reveals that religious courts in Indonesia often use the concept of *maslahah* to legalize polygamy, even though its implementation does not align with the fundamental principles of *maslahah*, which are actually oriented toward the well-being of all parties⁴. The misuse of the concept of *maslahah* by courts has also been found in concrete cases. Mudzhar's (2018) investigation revealed that religious courts often approve requests for polygamy based on interpretations of *maslahah*, even though this is detrimental to the wife. Such decisions further obscure the spirit of justice in *maslahah* and instead reinforce patriarchal traditions⁵. Similar research by Hadi (2023)

¹ Hamka Hasan et al., "Polygamy: Uncovering the Effect of Patriarchal Ideology on Gender-Biased Interpretation," *HTS Teologiese Studies / Theological Studies* 78, no. 4 (December 20, 2022), <https://doi.org/10.4102/hts.v78i4.7970>.

² Faye Chan, "Religious Freedom vs. Women's Rights in Indonesia: The Case of Mohammad Insa," *Archipel* 83, no. 1 (2012): 113–45, <https://doi.org/10.3406/arch.2012.4341>.

³ Izzat Abdika Mukalafin, "Maslahah Dalam Pertimbangan Hukum Hakim Pada Putusan Izin Poligami Nomor 0020/Pdt.G/2017/Pa.Mn," *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 1, no. 1 (January 26, 2021): 38–46, <https://doi.org/10.53754/iscs.v1i1.4>.

⁴ Muslihun Muslihun, "Pandangan Hakim Pengadilan Agama Terhadap Maslahah," *An-Nawa: Jurnal Studi Islam* 3, no. 1 (March 2, 2021), <https://doi.org/10.37758/annawa.v3i1.166>.

⁵ Mohamad Atho Mudzhar, "The Use and Misuse of Maslahah by the Court in Granting Polygamy Permissions," in *Proceedings of the 1st International Conference on Recent*

found that conservative interpretations of Islamic legal principles in polygamy cases also reinforce patriarchal views. Judges' decisions often prioritize the interests of husbands and fail to protect vulnerable women and children⁶.

Feminist criticism of polygamy highlights the latent implications of this practice, which not only perpetuates patriarchal hierarchies but also institutionalizes women's dependence on their husbands. Karimullah (2024) notes that polygamy leads to competition among wives and harms women's well-being. Existing marriage laws have failed to provide adequate protection for women. That is why Karimullah emphasizes the need for human rights-based legal reform to ensure gender justice and protection for women⁷. Still with gender bias in marriage law, Euis Nurlaelawati's (2020) investigation reveals that religious court judges often conservatively apply the concept of *maslahah* and uphold classical Islamic legal doctrine. Euis found that judges' interpretations of *maslahat* and *mafsadat* tend to reinforce gender asymmetry. In some cases, the implementation of the concept results in legal considerations that only accommodate the husband's requests without considering the potential harm to the wife or family. Such an approach not only perpetuates patriarchal structures but also exacerbates women's position in marital relationships⁸.

This article aims to answer two main questions: why does an interpretation of *maslahah* that is harmful to women occur in polygamy law? And how do the ideal conditions for polygamy align with the spirit of *maslahah* in the Qur'an? The analysis uses Walby's theory of patriarchy and Michel Foucault's theory of power relations. Walby

Innovations (SCITEPRESS - Science and Technology Publications, 2018), 1038–44, <https://doi.org/10.5220/0009922510381044>.

⁶ Mukhammad Nur Hadi, Latifatul Islamiyah, and Cecep Soleh Kurniawan, "Conservatism on Islamic Legal Maxims: Judicial Interpretation of Polygamous Marriage at the Religious Courts of Mojokerto, Indonesia," *JIL: Journal of Islamic Law* 4, no. 2 (August 21, 2023): 172–96, <https://doi.org/10.24260/jil.v4i2.1637>.

⁷ Suud Sarim Karimullah, "A Feminist Critique of the Practice of Polygamy in the Context of Islamic Law and Human Rights," *Indonesian Journal of Law and Islamic Law (IJLIL)* 6, no. 1 (June 17, 2024): 38–53, <https://doi.org/10.35719/ijlil.v6i1.354>.

⁸ Euis Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia," *Hawwa* 18, no. 2–3 (October 28, 2020): 295–324, <https://doi.org/10.1163/15692086-12341380>.

identifies six structures of patriarchy, one of which is the patriarchal state in her work *Theorizing Patriarchy*⁹. This work explains that the state can be an institutional tool that preserves patriarchal domination, especially through gender-biased legal products¹⁰. Walby highlights how the state works to maintain patriarchal relationships. This practice occurs through policies that appear neutral but actually reinforce gender inequality¹¹.

Patriarchal domination occurs because of the power that supports the system. Power is not automatically inherent in individuals or institutions; rather it is formed from dynamic relationships between individuals or groups within a social network. Discourse spread through interactions between these networks has shaped power. Discourse has also become an important instrument for regulating what is considered correct, normal, or legitimate in society. As a result, it indirectly frames the mindset and actions of individuals and groups¹². The use of power relations theory shows that *maslahah* functions as a tool used by dominant actors such as the state to legitimize patriarchal domination. Foucault argues that discourse can function as a form of productive power¹³. The application of this function in interpreting *maslahah* makes it a narrative “for the common good” that normalizes the subordination of women in institutions such as marriage. This approach functions *maslahah* as a productive power network that not

⁹ Sylvia Walby, “Theorising Patriarchy,” *Sociology* 23, no. 2 (1989): 213–34, <http://www.jstor.org/stable/42853921>.

¹⁰ Jadhav, S. M., and Prabhanjan Mane. Exploration of Sociologist Sylvia Walby’s Six Structures of Patriarchal Society in Sarah Daniels’s Play *Ripen Our Darkness*. 2020. Vol. 68 No. 32 (2020): Special Issue on Discrimination in Literature. <https://archives.ourheritagejournal.com/index.php/oh/article/view/3322>

¹¹ Sylvia Walby, *Patriarchy at Work: Patriarchal and Capitalist Relations in Employment, 1800-1984* (John Wiley & Sons, 2013).

¹² Richard A Lynch, “Is Power All There Is? Michel Foucault and the “Omnipresence” of Power Relations,” *Philosophy Today* 42, no. 1 (1998): 65, <https://www.proquest.com/openview/e8234578202d6e58cb7eb713c7929f90/1?pq-origsite=gscholar&cbl=42445>; Kevin S. Jobe, “Foucault and the Telos of Power,” *Critical Horizons* 18, no. 3 (July 3, 2017): 191–213, <https://doi.org/10.1080/14409917.2017.1293888>.

¹³ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (Pantheon, 1980).

only limits women's rights but also creates a social framework that maintains gender hierarchy.

This article uses a qualitative method with a critical discourse analysis approach. Data collection includes a literature review of scientific articles, books, and legal documents related to polygamy in Indonesia. The use of critical discourse analysis in this study has identified patriarchal bias in legal discourse and interpretations of *maslahah*. This analytical choice has helped the author explore how power relations influence legal interpretations. In addition to critical discourse analysis, this article also employs hermeneutic analysis to interpret QS An-Nisa: 3 in the context of justice and social protection in reviewing polygamy. The combination of these two analyses has provided a comprehensive understanding of the regulation of polygamy in Indonesia, as well as contributing to the academic and practical discourse on the regulation of polygamy in Indonesia. The disclosure of patriarchal bias in the interpretation of *maslahah* is important to encourage more equitable and women-oriented legal reform.

Patriarchal Bias in the Regulation and Practice of Polygamy in Indonesia

Articles 3-5 of Law No. 1 of 1974 on Marriage (Marriage Law) and Articles 55-59 of Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law (KHI) form the legal basis for polygamy in Indonesia. Article 3 of the Marriage Law, Articles 56 and 59 of the KHI regulate the authority and mechanisms of the court in granting permission for polygamy. Article 4 of the Marriage Law and Article 57 of the KHI contain alternative conditions for applying for permission for polygamy, namely: the condition of a disabled wife, inability to give birth, and inability to fulfill her obligations. Article 5 of the Marriage Law, Article 55, and Article 58 of the KHI contain cumulative conditions, namely: the wife's consent, the husband's commitment to meet the needs of his wife and children, and the ability to treat all wives fairly. These two regulations are designed to ensure fairness in marriage. However, their implementation often sparks controversy due to gender bias that disadvantages women.

One of the main issues that often arises is the application of the principle of *maslahah* in this legal context, which is seen as favoring

men's interests. Mayasari's (2021) findings reveal that the regulations on polygamy in the Marriage Law and the Compilation of Islamic Law do not reflect substantive justice. Mayasari quotes Asghar Ali Engineer, who emphasizes that justice must prioritize the welfare of all parties, not just formalities. Although both regulations stipulate that the first wife's consent is a requirement for polygamy, many cases show that this mechanism is insufficient to protect women's rights. Both regulations have regulatory weaknesses in creating a balance between religious principles and social protection¹⁴.

Santoso and Nasrudin (2021) reinforce this criticism by highlighting the weak protection of women and children in polygamy regulations. They note that this law does not fully consider the social and economic impacts on women, especially in cases where the wife is in a vulnerable position¹⁵. The findings of Nur and Tanjung (2024) also highlight the importance of contextualizing polygamy laws to bring them more in line with Islamic values that prioritize justice and welfare. They argue that regulations in Indonesia tend to be rigid in applying Islamic principles, resulting in a failure to create harmony between religious law and state law. The pattern of patriarchal bias in the legal system is to emphasize formality over the substance of justice¹⁶.

Another aspect that reinforces patriarchy in polygamy regulations is the ambiguity in the provisions on polygamy requirements in the Marriage Law. Nurlaelawati (2020) revealed that the formulation of these regulations reflects cultural and social biases in articles that allow for broad interpretation. An example is the

¹⁴ Lutfiana Dwi Mayasari, Akmal Adi Cahya, and Ulfa Wulan Agustina, "Islamic Justice in Indonesia Polygamy Regulation on Asghar Ali Engineer's Perspective," *Al-Mazaahib: Jurnal Perbandingan Hukum* 9, no. 1 (September 12, 2021): 1, <https://doi.org/10.14421/al-mazaahib.v9i1.2292>.

¹⁵ Dri Santoso and Muhamad Nasrudin, "POLYGAMY IN INDONESIA AND ITS RELEVANCE TO THE PROTECTION OF WOMEN AND CHILDREN IN THE PERSPECTIVE OF ISLAMIC LAW PHILOSOPHY," *AKADEMIKA: Jurnal Pemikiran Islam* 26, no. 1 (June 30, 2021): 121, <https://doi.org/10.32332/akademika.v26i1.2406>.

¹⁶ Muhammad Nur and Dhiauddin Tanjung, "Contextualization of Polygamy Law; Justification of Islamic Legal Principles against Positive Regulations in Indonesia," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (July 31, 2024): 273–87, <https://doi.org/10.32505/jurisprudensi.v16i2.8108>.

provision requiring the consent of the first wife as one of the prerequisites for polygamy. Although it appears to provide protection, this requirement lacks a clear mechanism to ensure that such consent is given without any pressure. As a result, women often find themselves in situations where they feel they have no choice but to agree to their husbands' requests for polygamy¹⁷.

Kurniawan (2022) highlights the dilemma between Islamic legal principles and human rights in the regulation of polygamy. The Marriage Law allows polygamy under certain conditions, such as the first wife's inability to meet her husband's needs or her infertility. These requirements create gender bias because such reasons place women in a position of subordination. These requirements, based on physical weakness, do not protect women and reflect a disregard for the principle of substantive justice taught in *maqashid syariah*¹⁸.

In addition to the requirements, another rule in polygamy that benefits men is the absence of regulations to punish perpetrators of illegal polygamy. Azharuddin (2024) highlights that this weakness creates a space that is detrimental to women. These practices are still common in society. The practice of polygamy, especially in the form of unregistered marriages, is only beneficial to men. These practices have harmed the wives and children from the first marriage, while also causing suffering to the parties involved in subsequent marriages. The lack of clarity in legal sanctions provides opportunities for perpetrators to avoid legal accountability. These dilemmas highlight the need for stricter revisions to close this loophole. The implementation of revisions must effectively protect women from illegal polygamy practices¹⁹.

Certain cases show that judges are ultimately forced to validate polygamous marriages that have taken place without being registered.

¹⁷ Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia."

¹⁸ Basuki Kurniawan, Edi Purwanto, and Sareef Tehtae, "BETWEEN ISLAMIC LAW AND HUMAN RIGHTS: AMBIGUOUS REGULATION REGARDING POLYGAMY IN INDONESIA," *Al'Adalah* 25, no. 2 (December 30, 2022): 261–68, <https://doi.org/10.35719/aladalah.v25i2.312>.

¹⁹ Azharuddin Azharuddin, "Criminal Sanctions Against Perpetrators of Underhand Polygamy," *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyah* 6, no. 2 (June 20, 2024): 100–111, <https://doi.org/10.58824/mediasas.v6i2.88>.

Decision No. 634/Pdt.G/2018/PA.Mtr is an example of a decision that has violated administrative provisions regarding requests for the validation of polygamous marriages. SEMA No. 3 of 2018 has stipulated that the Supreme Court does not grant permission for the validation of polygamous marriages. However, the judge in that decision made the opposite interpretation based on considerations of public interest. The consideration of *maslahah* in this decision is that it is better to validate the polygamous marriage than not to validate it. The validation of the marriage will bring public interest to the second wife and her family. The legal status of the marriage will open a legal pathway for the second wife and her family to access the husband's pension funds²⁰.

The practice of polygamy in Indonesia has long been a subject of controversy. The implementation of the law reflects the complex dynamics between religious norms, cultural traditions, and principles of positive law. Legal institutions play a central role in regulating and deciding polygamy cases, but their practices often show a bias toward patriarchal norms that weaken the position of women. Nurlaelawati (2020) notes that judges in religious courts in Indonesia often use conservative legal interpretations, especially through the concept of *maslahah*. Many cases show the use of *maslahah* to legitimize requests for polygamy by husbands, even though the reasons given do not always support the principle of justice. This bias reflects a mindset that is still heavily influenced by patriarchal culture, in which women often do not have a fair opportunity to voice their objections²¹.

Judges in religious courts frequently find difficulties in balancing administrative requirements with substantive aspects. This relationship between administrative and substantive aspects creates a gap in the court's decision-making process. Judges' considerations reveal a conservative approach that focuses on administrative requirements, such as the husband's economic capacity, without

²⁰ Muhammad Muhajir and Qurratul Uyun, "SEMA Waiver Number 3 of 2018 in the Case of Isbat for Polygamous Marriage: Study of Legal Considerations of Judges in Decision Number 634/Pdt.G/2018/PA.Mtr," *Asy-Syir'ab: Jurnal Ilmu Syari'ah Dan Hukum* 55, no. 2 (July 10, 2021): 263, <https://doi.org/10.14421/ajish.v55i2.1002>.

²¹ Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia."

considering the social and psychological impact on the wife and children. Such standard decision-making is insufficient to ensure substantive justice for all parties. Siregar's (2021) findings reinforce the thesis that religious courts often pay little attention to the impact of polygamy on children. Many court decisions focus on the wife's consent to remarry without considering how the children of the first wife will be affected by the decision. The consideration of granting permission for polygamy does not demonstrate a holistic approach, resulting in court decisions that do not consider the best interests of the children²².

Another way of interpreting *maslahah* that reinforces patriarchal dominance regarding permission for polygamy in religious court decisions is through the use of fiqh principles. Hadi's (2023) research reveals that judges at the Mojokerto Religious Court during 2020–2022 often used fiqh rules such as “dar'u al-mafāsīd muqaddamun 'alā jalb al-maṣāliḥ” (preventing harm takes precedence over achieving benefits) to legitimize requests for polygamy. This study analyzed 23 religious court rulings during that period. The results found that this principle was useful in supporting reasons such as the desire to have children or the wife's inability to meet the husband's biological needs as justification for allowing polygamy. Another reason is to avoid potential dangers such as adultery. These considerations are the main reasons for the decision, without considering the social and psychological implications for the first wife²³. These arguments ignore the needs of women and children as vulnerable parties in polygamous families.

Various challenges in the regulatory and judicial aspects show that the Marriage Law still requires in-depth revision to ensure more substantive justice. The revision must include clearer restrictions on the conditions for polygamy, strengthening of oversight of law enforcement, and adjustments to gender-biased articles. The root of

²² Mulia Siregar Fatimah Zuhrah, Muhammad Jailani, “Islamic Legal Protection of Child's Rights in Polygamous Marriage in Indonesia,” *Psychology and Education Journal* 58, no. 1 (January 20, 2021): 5195–5200, <https://doi.org/10.17762/pae.v58i1.1773>.

²³ Hadi, Islamiyah, and Kurniawan, “Conservatism on Islamic Legal Maxims: Judicial Interpretation of Polygamous Marriage at the Religious Courts of Mojokerto, Indonesia.”

the problem in the practice of granting polygamy permits is patriarchal reasoning. The urgency in improving the granting of polygamy permits lies in regulatory reform. Revising polygamy regulations in Indonesia is expected to better reflect the values of justice and welfare taught in Islam, while aligning with principles of human rights.

Patriarchal Power Relations in the Interpretation of *Maslahah* in Polygamy

The gender-biased interpretation of the *maslahah* of polygamy is a product of the complex interaction between state power, patriarchal culture, and dominant discourse, which reinforce each other. Sylvia Walby's theory of patriarchy views patriarchy as a system rooted in social structures through institutions such as the household, the state, and culture²⁴. Meanwhile, Michel Foucault sees discourse as power not only as a tool for producing repressive actions but also as a productive one. Discourse becomes a tool that creates and reproduces power in a constantly evolving form²⁵. Gender-biased interpretations of *maslahah* do not arise spontaneously, but are formed, disseminated, and internalized through institutionalized power relations.

The state plays a central role in supporting discourses of *maslahah* that benefit men. The existence of the Marriage Law, which legitimizes the use of *maslahah* to benefit men in polygamy, demonstrates the state's gender bias. Indonesia has legalized polygamy through the Marriage Law on the grounds labeled as *maslahah*. The reason for *maslahah* can be procreation. Thus, the infertility of the wife or the wife's inability to fulfill her obligations are considered grounds for allowing polygamy. This condition contains deep gender bias. The state policy that sets physical conditions as formal requirements for polygamy reflects the spirit of state legal products that regulate women's bodies. Foucault sees such legal products as reflecting the

²⁴ Deodatus Katabaro Buberwa, "Patriarchy Ideology and Workload Inequality within Household," *Journal of Human-Social Science* 16, no. 1 (2016): 1–9.

²⁵ Younes Poorghorban, "On Michel Foucault: Power/Knowledge, Discourse, and Subjectivity," *OKARA: Jurnal Bahasa Dan Sastra* 17, no. 2 (2023): 318–28; María Cristina Conforti Rojas, "DISCOURSES, INSTITUTIONS AND KNOWLEDGE IN MICHEL FOUCAULT'S THOUGHT," *Universitas Philosophica* 34, no. 69 (2017): 105–19.

utopian goals of the state legal products. State power regulates individual lives as if to create an ideal “social order,” even though in reality it perpetuates inequality²⁶. Such regulations illustrate that the state has become an agent of public patriarchy, as explained by Walby. The state creates regulations that appear to be ‘fair,’ but actually perpetuate male dominance. The state is present to legalize violence against women through polygamy regulations²⁷.

In addition to the state, culture plays an important role in reinforcing the gender-biased meaning of *masalahah*. Culture absorbs the discourse produced by the state and reproduces it as an unchallenged social norm. Societies steeped in patriarchal culture often frame polygamy as a solution to certain social problems and consider it normal. A nation-wide survey in 2021 through social media platforms found that the majority of the public perceives polygamy as normal and not necessarily negative. Sentiment analysis of tweets on Twitter provides evidence of this. Some of the reasons for considering polygamy to be normal are the desire to find solutions to certain social problems, such as procreation and avoidance of sin²⁸. The public's view of polygamy shows the use of an interpretation of public interest that benefits men. Unfortunately, these interpretations have become part of cultural values that are internalized through social institutions such as family, religion, and the media. These findings confirm Foucault's view that culture functions as normalization, a process in which practices

²⁶ Jim Jose, *Biopolitics of the Subject: An Introduction to the Ideas of Michel Foucault* (Northern Territory University Press, 1998); Lidia Volokitina, “Michel Foucault’s Idea of ‘Biopolitics’ in the Context of Contemporary Legal Theory Methodology,” *Legal Linguistics*, no. 27(38) (April 1, 2023): 136–40, [https://doi.org/10.14258/leglin\(2023\)2724](https://doi.org/10.14258/leglin(2023)2724).

²⁷ Rike Humairoh, “Aturan Poligami Dalam Perundang-Undangan Di Indonesia: Studi Atas Pandangan Aktivis Perempuan Pada Lembaga Swadaya Masyarakat (LSM) Di Yogyakarta,” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum* 54, no. 1 (June 13, 2020): 105, <https://doi.org/10.14421/ajish.v54i1.665>.

²⁸ Hertina Hertina et al., “Data Mining Applied about Polygamy Using Sentiment Analysis on Twitters in Indonesian Perception,” *Bulletin of Electrical Engineering and Informatics* 10, no. 4 (August 1, 2021): 2231–36, <https://doi.org/10.11591/eei.v10i4.2325>.

that are fundamentally unfair or discriminatory become seen as 'normal' and culture accepts them as a reasonable moral order²⁹.

Religious media reinforce this narrative by portraying women who accept polygamy as religious, humble, and devoted individuals. Conversely, women who reject polygamy are stigmatized as defying nature or disobeying religious teachings. Foucault asserts that discourse not only describes reality but also constructs a framework of thinking that shapes invisible injustices³⁰. The use of discourse on *maslahat* in this context leads to efforts to justify polygamy and transform discriminatory practices into something considered moral and the "best solution." This discourse operates through religious and cultural language that promotes the importance of justice in polygamy. However, the discourse limits justice to material aspects, ignoring the emotional and psychological dimensions that are detrimental to women.

The involvement of religion in the discourse of *maslahah* adds a layer of legitimacy to the practice of polygamy. Societies with strong religious cultures often interpret religious texts selectively to support the patriarchal agenda. For example, the interpretation of the concept of justice, which is a key requirement in polygamy according to Islamic teachings, is limited to the equal distribution of material goods, without considering the emotional burden on women. Patriarchal culture has instilled a norm of female obedience to men. This concept of obedience further pressures women to accept polygamy as a noble form of sacrifice. Religion and culture have worked together to reinforce power relations that place men as dominant subjects and women as submissive objects.

²⁹ Iswandi Syahputra, "Post Media Literacy: Menyaksikan Kuasa Media Bersama Michel Foucault," *Jurnal ASPIKOM* 1, no. 1 (January 9, 2017): 1, <https://doi.org/10.24329/aspikom.v1i1.4>; Deepa Bhandaru, "Is White Normativity Racist? Michel Foucault and Post-Civil Rights Racism," *Polity* 45, no. 2 (April 2013): 223–44, <https://doi.org/10.1057/pol.2013.6>.

³⁰ D P Deolalkar, "VERBAL MEDITATION ON FOUCAULT'S NOTION OF DISCOURSE," *A GLOBAL JOURNAL OF HUMANITIES* IV, no. IV (2021); Graham P. Martin and Justin Waring, "Realising Governmentality: Pastoral Power, Governmental Discourse and the (Re)Constitution of Subjectivities," *The Sociological Review* 66, no. 6 (November 23, 2018): 1292–1308, <https://doi.org/10.1177/0038026118755616>.

This process reflects the combination of private and public patriarchy as described by Walby. The practice of private patriarchy shows that men have complete control in the household³¹. Meanwhile, public patriarchy operates through the state, religion, and social institutions that legitimize these decisions³². These power relations are interrelated. One form of patriarchy supports the other. The state through its policies, culture through social norms, and discourse through moral language; these three relationships create an ecosystem that continuously reproduces the subordination of women.

When biased discourse dominates, women as first wives in polygamous marriages have no space to express their disagreement. Foucault's perspective sees compulsion arising from productive power that creates 'new truths' through discourse³³. Without critical examination, this new truth no longer views gender inequality in polygamy as a problem. This anomaly has become part of the normal social order. Polygamy fundamentally places women in a vulnerable position emotionally, economically, and socially. However, its existence is seen as a solution to societal problems. In reality, it worsens women's subordination.

Subtle and effective social control mechanisms also normalize injustice. Foucault observed that power operates not only through direct coercion but also through the internalization of values by individuals³⁴. Normalization in the context of polygamy operates

³¹ Walby, *Patriarchy at Work: Patriarchal and Capitalist Relations in Employment, 1800-1984*; Mostafizur Rahman and Nahida Anwar, "Living between Brackets: Public-Private Patriarchal Violence and the Mental State of Women on Both Sides of Radcliffe Line," *Journal of Social Studies (JSS)* 18, no. 2 (October 31, 2022): 279–90, <https://doi.org/10.21831/jss.v18i2.49597>.

³² Walby, *Patriarchy at Work: Patriarchal and Capitalist Relations in Employment, 1800-1984*; Noor Sanauddin, Jamil Ahmad Chitrali, and Syed Owais, "Public Patriarchy: An Analysis of Women's Access to Education, Work and Politics in Pakistan," *Putaj Humanities & Social Sciences* 23, no. 1 (2016).

³³ Raymie E. McKerrow, "Foucault's Relationship to Rhetoric," *Review of Communication* 11, no. 4 (October 2011): 253–71, <https://doi.org/10.1080/15358593.2011.602103>; Prakash Bhattarai, "Discourse, Power and Truth: Foucauldian Perspective," *International Journal of English Literature and Social Sciences* 5, no. 5 (2020): 1427–30, <https://doi.org/10.22161/ijels.55.13>.

³⁴ Jobe, "Foucault and the Telos of Power."

through the dissemination of discourse that accepting polygamy is part of women's moral or religious responsibility. Religious teachings, mass media, and interpretations of religious texts that consistently promote the discourse of the benefits of polygamy reinforce this view³⁵. As a result, women are not only subject to external power, but also become agents who reproduce their own subordination.

Some applications for polygamy permits in religious courts, as discussed earlier, reveal this subordination of women. Judges often use a conservative approach that focuses on fulfilling administrative requirements, such as the husband's economic capacity, without considering the social and psychological impact on the wife and children. This practice reflects how the state, as a public patriarchal agent according to Walby³⁶, reinforces male dominance through legal structures that only serve the interests of men as the primary subjects of decision-making.

Analysis based on Foucault's theory reveals that this court practice is a concrete example of productive power that creates a discourse of truth through legal rules³⁷. The neglect of the social and emotional dimensions for women in religious court decisions not only reproduces inequality but also creates a new 'normality'; women must submit to decisions that the state has legitimized. This reinforces unequal power relations. Men not only dominate the private spheres but also receive full support from the public sphere to perpetuate their power.

³⁵ Nikmatullah Nikmatullah and Emawati, "Conservative Muslim and Textual Interpretation of the Hadiths in Polygamy Propaganda in Indonesia," *Humanities, Arts and Social Sciences Studies*, September 23, 2024, <https://doi.org/10.69598/hasss.24.3.263308>.

³⁶ S Duncan, "Theorising Differences in Patriarchy," *Environment and Planning A: Economy and Space* 26, no. 8 (August 1, 1994): 1177–94, <https://doi.org/10.1068/a261177>.

³⁷ Bijaya Gautam, "Critiques of Development Using Foucault's Discourse and Power Theory," *Journey for Sustainable Development and Peace Journal* 2, no. 1 (February 28, 2024): 82–94, <https://doi.org/10.3126/jsdpj.v2i1.63253>; Gerald Turkel, "Michel Foucault: Law, Power, and Knowledge," *Journal of Law and Society* 17, no. 2 (1990): 170, <https://doi.org/10.2307/1410084>.

The application of Walby's theory reveals how public and private patriarchy operate simultaneously³⁸. Court decisions that only consider administrative aspects have reinforced the social norm that women lack the autonomy to refuse polygamy. At the same time, the use of the discourse of *maslahah* leads to a view that justifies this injustice. The interpretation of *maslahah* creates a situation where women are not only subjugated to male power but also fragmented in competitive relationships among wives. This competition further strengthens male dominance and weakens female solidarity. Cooperation among women should be the basis for resisting patriarchal structures. Ultimately, gender-biased interpretations of *maslahah* are not only the product of state power or individual culture, but also reflect unfair law enforcement practices.

Walby's theory of patriarchy helps to analyze how public patriarchy works through the state to reinforce male dominance³⁹. Religious courts, as part of the state legal system, become a tool to legitimize discourse that ignores women's experiences, while placing men as rulers in domestic relations. Meanwhile, Foucault's theory helps explain how productive power works through this legal discourse to create a "new normality," in which women are expected to submit to decisions deemed legally and morally valid. The exclusion of emotional and social dimensions from legal considerations not only supports private patriarchy but also perpetuates public patriarchal power through the state.

Justice and *Maslahah* in Polygamy from the Perspective of the Qur'an

The Qur'an, as the holy book of Islam, offers universal guidelines that are relevant to addressing various issues related to

³⁸ Ambika Kohli, "Forced and Underage Marriages in New Zealand: Some Reflections on Public and Private Patriarchy and Intersectionality," *International Journal for Intersectional Feminist Studies: The Journal of Project Monna Research Centre* 1 (2015), [re/bitstreams/f0d7a937-0c0a-4f7c-9bbc-809bceca4028/content](https://bitstreams/f0d7a937-0c0a-4f7c-9bbc-809bceca4028/content).

³⁹ Risma Ade Aryati and Emy Susanti, "Gender Awareness and Patriarchal Relations on Merariq Kodeq Culture in Ampenan Mataram," *Jurnal Sosiologi Dialektika* 18, no. 2 (January 24, 2024): 189–99, <https://doi.org/10.20473/jsd.v18i2.2023.189-199>.

polygamy. The study of polygamy in the contemporary context has sparked debate between those who focus on the literal text and those who emphasize the substantive values of justice in the Qur'an⁴⁰. QS An-Nisa: 3, the verse often cited as the legal basis for polygamy, allows for a deeper interpretation of justice and welfare.

QS An-Nisa: 3 holds a significant place in legitimizing polygamy. This verse requires a more holistic interpretation to ensure its implementation within the proper framework of its intended purpose. Holistic interpretation involves understanding a verse by connecting it to the verses before and after it. This interpretation considers the historical context in which the verse was revealed and applies universal principles of humanity⁴¹. A deeper interpretation reveals that this verse contains strict conditions, namely justice and the protection of paternal orphans, which are the primary prerequisites. Justice in the context of polygamy encompasses not only material distribution but also biological, emotional, psychological, and social aspects. Allah states that humans will never be able to act perfectly just among their wives, even if they try their best in QS An-Nisa: 129. This shows that the Qur'an actually gives a serious warning that polygamy is a huge responsibility that is almost impossible to carry out justly.

The Qur'an consistently places justice at the core of all its rules, including in relationships between men and women. For example, QS An-Nisa: 19 commands that women be treated well within the household: "... and live with them in kindness." Additionally, QS Al-Baqarah: 228 states that women have rights that are balanced with their obligations. This verse reflects the principle of equality in Islam. Practicing polygamy without regard for fairness has the potential to violate the principles of the Qur'an. Injustice in polygamy can take the form of inequality in the distribution of attention, emotional rights, and social opportunities. In this context, the Qur'an emphasizes the

⁴⁰ Marliana Ulfa, Norhayati Abu Bakar, and Muhammad Faizal Abd Rahman, "Analysis of Muhammad Shahrur's Thoughts on the Concept of Justice in Polygamy: A Perspective of Contemporary Islamic Law," *AL-MUQARANA* 2, no. 2 (August 26, 2024): 110–18, <https://doi.org/10.55210/jpmh.v2i2.449>.

⁴¹ Sofyan A.P. Kau and Zulkarnain Suleman, "Kritik Terhadap Hukum Islam Indonesia: Reinterpretasi Feminis Muslim Terhadap Ayat Poligami," *Ay-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 51, no. 1 SE-Articles (July 1, 2017): 25–52, <https://doi.org/10.14421/ajish.v51i1.319>.

importance of protecting women, both in domestic life and in society. This protection includes the right to be treated fairly and free from exploitation or discrimination.

The concept of justice in the Qur'an highlights the flaws in the interpretation of the conditions for polygamy contained in Indonesian regulations. The conditions feel far from fair. Indonesian regulations still use reasons such as infertility and physical disability as conditions for permission to practice polygamy. Implementation in a modern context needs to critique these reasons⁴². Infertility should not be a sufficient reason to justify polygamy. The Qur'an itself never links a person's value to their ability to have children. QS Al-Hujurat: 13 emphasizes that piety, not biological or physical attributes, determines human dignity. Physical disability as a reason for polygamy also contradicts the principle of respect for humanity in the Qur'an⁴³. Using physical condition as a basis for remarriage is a form of discrimination that is inconsistent with Islamic values⁴⁴. Additionally, infertility and physical disabilities in the modern context can be addressed through medical solutions, so their management does not need to involve the practice of polygamy.

Therefore, alternative interpretations are needed to address the consideration of permitting polygamy. Contemporary scholars like Shahrur interpret QS An-Nisa (3) as a restriction on polygamy, not as an encouragement to practice it⁴⁵. Shahrur is one of the intellectuals

⁴² Aisudin ABDULLAH, Putu Ayu Sriasih WESNA, and I Wayan Kartika Jaya UTAMA, "Legal Consequences of Polygyny Marriage Based on a Compilation of Islamic Law (Khi) and Laws on Marriage," *Protection: Journal Of Land And Environmental Law* 2, no. 1 (June 6, 2024): 1–10, <https://doi.org/10.38142/pjlel.v2i1.1019>.

⁴³ Elvita Ameliah, Amin Songgirin, and Abdussalam Ali Ahmed Ahmed, "The Application For A Polygamy Permit Is Reviewed From An Islamic Legal Perspective (Analysis of PA.Depok Decision No. 3051/Pdt.G/2020/PA.Dpk)," *Legalis : Journal of Law Review* 1, no. 1 (October 5, 2023): 37–51, <https://doi.org/10.61978/legalis.v1i1.14>.

⁴⁴ Umi Supraptiningsih et al., "G Gender Analysis: Of Polygamy Permit Based on the Reason of Benefit," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 2 (December 31, 2023): 365–76, <https://doi.org/10.19109/nurani.v23i2.16937>.

⁴⁵ Martai Martai, "Konsep Poligami Perspektif Rasyid Ridha Dan Muhammad Syahrur," *Al-Adillah: Jurnal Hukum Islam* 3, no. 1 (January 25, 2023): 26–34,

who has produced progressive ideas about polygamy. This one intellectual even limits the permission for polygamy only to protect paternal orphans.

Shahrur uses the linguistic structure of the Qur'an to interpret the benefits of polygamy⁴⁶. He argues that the reason for allowing polygamy is more oriented towards social functions. Polygamy aims to protect paternal children from neglected circumstances. Shahrur argues that the message in the Qur'an adapts to the context of human nature. A paternal orphan in a social context is a child who has lost his father but still has his mother. A child who has lost both his father and mother is called a double orphan. Meanwhile, a child who has lost only his mother is called a maternal orphan. The message of the Qur'an adjusts the context of naming for children who have lost their fathers, while their mothers are still alive. Shahrur addresses this situation by arguing that marrying the mother of a paternal orphan is the right step to protect the orphan. If one only takes in an orphan to be raised, the protection provided is less than optimal because it means separating the orphan from his mother. Marrying the mother of the paternal orphan is a better option so that the man can protect the paternal orphan while keeping the child close to his mother. The paternal orphan, his mother, and the man practicing polygamy as the protector become one family. However, the practice of polygamy must adhere to additional conditions, namely the ability of the polygamist to act fairly⁴⁷.

<https://doi.org/10.61595/aladillah.v3i1.489>; Nur Khosiah, Reza Hilmy Luayyin, and David Prabowo, "POLIGAMI PERSPEKTIF MUHAMMAD ABDUH DAN MUHAMMAD SYAHRUR," *Imtiyaz: Jurnal Ilmu Keislaman* 5, no. 2 (September 3, 2021): 77–86, <https://doi.org/10.46773/imtiyaz.v5i2.149>; Udin Saprudin et al., "LIMITING THE NUMBER OF POLYGAMIES TO REALIZE ECONOMIC JUSTICE: A HERMENEUTIC ANALYSIS OF MUHAMMAD SYAHRUR," *QiST: Journal of Quran and Tafseer Studies* 2, no. 3 (September 28, 2023): 347–68, <https://doi.org/10.23917/qist.v2i3.2769>.

⁴⁶ Lindra Dharnela, "Menggali Teks, Meninggalkan Makna: Pemikiran Singkat Muhammad Syahrur Tentang Poligami," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 42, no. 1 SE-Articles (June 1, 2008): 205–24, <https://doi.org/10.14421/ajish.v42i1.257>.

⁴⁷ Muhammad Shahrur, *Metodologi Fiqih Islam Kontemporer*, ed. Terjemah: Sahiron Syamsuddin (Yogyakarta: eLSAQ Press, 2004); Muhammad Shahrur, *Al-*

Shahrur adopts a historical approach. The historical context of the revelation of QS An-Nisa: 3 was to protect paternal orphans and widows who were vulnerable after the war. Thus, polygamy in the Qur'an is fundamentally intended to provide social protection in special circumstances, not to satisfy personal desires. This emphasis should be the foundation for understanding this verse, especially when implementing the spirit of polygamy in law and social practice. Polygamy is not intended to increase offspring or even satisfy biological needs. Its purpose is nobler than biological aspects, which is to protect paternal orphans⁴⁸. Shahrur's interpretation of justice in polygamy is more oriented toward social welfare, not individual welfare, and certainly not individual biological needs.

The Urgency of Polygamy Law Reform

Polygamy law reform is important. Several previous studies have concluded that one of the causes of the polygamy controversy is the lack of harmony between Islamic law and Indonesian positive law. This lack of harmony creates ambiguity in the implementation of polygamy laws. Many cases reveal that this ambiguity causes women to lose the protection they should receive. A revision of regulations that is more oriented toward social justice suggests considering women's needs in a modern context⁴⁹. In line with this, Ma'u (2023) emphasizes the importance of harmonizing Islamic law and positive law to create inclusive justice. He highlights that state law must be able to integrate Islamic values of justice without sacrificing human rights principles.

Kitab Wa Al-Qur'an; Qira'ah Mu'ashirah (Damaskus: al-Ahali lit-Thaba'ah wa an-Nasyr wa at-Tauji', 1990).

⁴⁸ Darna Daming, Achmad Abubakar, and Muhsin Mahfudz, "Misunderstanding of Polygamy Verses in the Qur'an," *AL-MAIYYAH: Media Transformasi Gender Dalam Paradigma Sosial Keagamaan* 14, no. 2 (2021): 128–42, <https://ejurnal.iainpare.ac.id/index.php/almaiyyah/article/view/8665>.

⁴⁹ Aminah Aminah and Asyharul Muala, "Analysis of Polygamy Law in Indonesia: Harmony between Islamic Law and State Law," *Indonesian Journal of Islamic Law* 6, no. 2 (December 30, 2023): 1–17, <https://doi.org/10.35719/ijil.v6i2.2020>.

This perspective forms the basis for reforming polygamy laws to be more fair to women⁵⁰.

The need for reform of polygamy law in Indonesia is important to ensure that this practice is in line with the values of the Qur'an and contemporary realities⁵¹. The issue of polygamy has been a subject of controversy since the regulatory level. To address the controversy surrounding polygamy, the most urgent improvement that needs to be made is to the regulations. The rules governing polygamy in Indonesia's Marriage Law already contain problems. Implementation issues are an inevitable consequence of regulatory problems. The practice of granting permission for polygamy often fails to consider substantive justice, which should be at the core of policies related to polygamy. The judicial controversy is a logical consequence of the regulatory controversy. Therefore, legal reforms that are more oriented toward gender justice and values of public welfare are necessary to align with the teachings of the Quran. Proposals for revising the conditions for polygamy must consider a paradigm shift, emphasizing the roles of the state, courts, culture, discourse, and other stakeholders in constructing *masalah* based on patriarchal theory and power dynamics. The state, which has functioned as a public agent of patriarchy, needs to shift its role from merely legitimizing male power to protecting substantive justice⁵², rather than focusing solely on the husband's economic capacity. This change not only supports justice but also reduces the patriarchal dominance inherent in legal practices.

In addition to considering the interests of wives and children, the conditions for polygamy should return to the spirit of social

⁵⁰ Dahlia Haliah Ma'u, "The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 9, 2023): 669, <https://doi.org/10.22373/sjkh.v7i2.8519>.

⁵¹ Lia Noviana, Risma Wigati, and Nurulaini Halimatus Sakdiyah, "The Dynamics of Family Law Reform in Asia and Africa (Portrait of Polygamy Regulations in Indonesia, Malaysia, Pakistan, Morocco and Tunisia)," *Al-Syakhsyiyah: Journal of Law & Family Studies* 4, no. 2 (February 24, 2023): 187, <https://doi.org/10.21154/syakhsyiyah.v4i2.5895>.

⁵² Ibnu Elmi AS Pelu et al., "Polygamy Law Reform Through the Development of the Aceh Qanun: A New Approach to Protecting the Rights of Women and Children in Indonesia," *El-Mashlahah* 14, no. 1 (June 30, 2024): 149–68, <https://doi.org/10.23971/el-mashlahah.v14i1.7864>.

protection as mandated by the context of the interpretation of QS An-Nisa: 3. The original purpose of the conditions for polygamy is to protect paternal orphans⁵³. The creation of polygamy requirements should instead focus on the status of the subsequent wife, which should only come from specific categories, such as widows caring for children as paternal orphans, socially vulnerable women, or those requiring special protection. These requirements impose stricter limits and refocus polygamy on social welfare rather than personal satisfaction⁵⁴.

Additionally, the evaluation of a husband's ability to be fair must consider both material and immaterial capabilities. Materially, the husband must demonstrate his ability to provide for economic needs without neglecting his responsibilities toward his previous wife and children. Immaterially, the court must assess the husband's emotional capacity to act fairly and provide equal attention to all parties involved.

Other reforms involve education and cultural transformation. The state and community institutions must work together to educate the public about the values of justice in Islam that reject the exploitation of women. Discourse that normalizes polygamy must be transformed into a narrative that emphasizes the heavy moral, social, and spiritual responsibilities involved in the practice of polygamy. Social programs such as skills training and economic assistance for paternal orphans and widows can also be alternatives that are more in line with the objectives of *maslahah* in the Qur'an. This legal revision not only redefines the requirements for polygamy but also reforms the social structures that have long supported gender inequality.

Polygamy in the Qur'an should not be interpreted as an absolute right of men, but as a significant responsibility that must be carried out with justice. QS An-Nisa: 3 and QS An-Nisa: 129 clearly

⁵³ Khairul Hamim, "Comparison Between Double Movement Theory and Nazariyyat Al-Hudud Theory on Polygamy Laws," *El-Mashlahah* 12, no. 2 (December 31, 2022): 190–209, <https://doi.org/10.23971/el-mashlahah.v12i2.4903>; Fajar Syarif, "THE CONTEXTUAL INTERPRETATION OF POLYGAMY VERSES IN THE QUR'AN," *Journal of Islamic Studies and Humanities* 5, no. 1 (December 17, 2020): 1–13, <https://doi.org/10.21580/jish.v5i1.5212>.

⁵⁴ Sam'ani Sam'ani, "Maghza Nasr Hamid Abu Zayd's Interpretation Concept as A Counter of Polygamy Pragmatism," *Religia* 25, no. 2 (October 30, 2022), <https://doi.org/10.28918/religia.v25i2.5156>.

warn that justice is the primary condition that is nearly impossible for humans to achieve perfectly⁵⁵. Reform of polygamy laws in Indonesia must be oriented toward the values of justice and protection of paternal orphans as taught in the Qur'an. A deep interpretation and reform of the law based on justice are hoped for so that the practice of polygamy can truly reflect the common good, not merely serve as a tool to perpetuate gender inequality. This approach will realize the universal values of the Qur'an in real life, creating a more just and dignified society.

Revising the rules on polygamy does not mean agreeing to an absolute ban on polygamy. Discussions about banning polygamy have been raised in the Counter of Legal Draft on the compilation of Islamic law. This draft originated from the Gender Mainstreaming Team of the Ministry of Religion of the Republic of Indonesia. Articles 2 and 3 of the document state that marriages outside the monogamous form are deemed legally invalid⁵⁶. Although the language does not directly state a ban, the use of "legally invalid" implies that polygamy is not recognized as a valid marriage. This means that the state does not protect it. This is a subtle prohibition. Polygamy is still possible to be allowed. However, the conditions are very strict, which is only applicable to marrying widows in order to protect paternal orphans, so that the message of social welfare protection can be realized.

Conclusion

The interpretation of *maslahah* that is detrimental to women is a product of patriarchal power relations between state power, culture, and discourse. The state has recognized the concept of *maslahah* that benefits men in its legal products. Society's culture has also supported this. Rules regarding the conditions for polygamy that benefit men demonstrate the state's support for patriarchal relations at the regulatory level. Several court decisions that allow polygamy on the consideration of *maslahah* that benefits men also reflect the state's role

⁵⁵ Masiyan M Syam and Faisal Haitomi, "Poligami Dalam Surah Al-Nisa (4): 3 (Aplikasi Pendekatan Kontekstual Abdullah Saeed)," *Jurnal El-Afkar* 9, no. 1 (2020).

⁵⁶ Tim Pangarusutamaan Gender DEPAG RI, *Pembaruan Hukum Islam Counter Legal Draft Kompilasi Hukum Islam* (Jakarta: Tim Pangarusutamaan Gender DEPAG RI, 2004).

as an agent of patriarchy at the judicial level. Culture further strengthens the discourse of *maslahah* that harms women. Society's culture has reinforced patriarchal relations by considering the practice of polygamy to be normal. Culture creates a tyrannical normality around the existence of polygamy by praising it as a form of worship to achieve piety, increase offspring, and the role of men as heads of families. Culture has formed a private patriarchy, and then the state's legal products have reinforced it into a public patriarchy. The ideal conditions for polygamy, in line with the spirit of *maslahah* as outlined in the Quran, must be based on the protection of paternal orphans. Quranic verse An-Nisa: 3 directs polygamy toward protecting paternal orphans. Therefore, tightening the conditions for polygamy is necessary to return to the spirit of the purpose of polygamy in the Qur'an, namely, protecting paternal orphans. The conditions for polygamy are no longer based on a wife's physical disability, inability to fulfill her duties, or inability to produce offspring. Conditions for polygamy based on a wife's physical condition only contain values of *maslahah* that are purely individual or biological for the benefit of men. The purpose is not for social protection but solely to fulfill the biological needs of men. The change in these conditions must align with the values considered in the Qur'an regarding polygamy, namely, social welfare. Thus, the conditions for polygamy should only allow marriage to a widow with children as paternal orphans, and the husband's ability to act fairly both materially and immaterially.

Acknowledgments

The authors would like to express gratitude to Institute for Research and Community Service (Lembaga Penelitian dan Pengabdian kepada Masyarakat) at Universitas Islam Negeri Sunan Kalijaga Yogyakarta for the financial support in funding this research in the 2022 fiscal year (Surat Keputusan Rektor UIN Sunan Kalijaga Yogyakarta Nomor 116.8 Tahun 2022).

Conflicts of Interest

The authors declare no conflicts of interest with any party in writing this article

Bibliography

- A.P. Kau, Sofyan, and Zulkarnain Suleman. "Kritik Terhadap Hukum Islam Indonesia: Reinterpretasi Feminis Muslim Terhadap Ayat Poligami." *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 51, no. 1 SE-Articles (July 1, 2017): 25–52. <https://doi.org/10.14421/ajish.v51i1.319>.
- ABDULLAH, Aisudin, Putu Ayu Sriasih WESNA, and I Wayan Kartika Jaya UTAMA. "Legal Consequences of Polygyny Marriage Based on a Compilation of Islamic Law (Khi) and Laws on Marriage." *Protection: Journal Of Land And Environmental Law* 2, no. 1 (June 6, 2024): 1–10. <https://doi.org/10.38142/pjlel.v2i1.1019>.
- Ameliah, Elvita, Amin Songgirin, and Abdussalam Ali Ahmed Ahmed. "The Application For A Polygamy Permit Is Reviewed From An Islamic Legal Perspective (Analysis of PA.Depok Decision No. 3051/Pdt.G/2020/PA.Dpk)." *Legalis : Journal of Law Review* 1, no. 1 (October 5, 2023): 37–51. <https://doi.org/10.61978/legalis.v1i1.14>.
- Aminah, Aminah, and Asyharul Muala. "Analysis of Polygamy Law in Indonesia: Harmony between Islamic Law and State Law." *Indonesian Journal of Islamic Law* 6, no. 2 (December 30, 2023): 1–17. <https://doi.org/10.35719/ijil.v6i2.2020>.
- Aryati, Risma Ade, and Emy Susanti. "Gender Awareness and Patriarchal Relations on Merariq Kodeq Culture in Ampenan Mataram." *Jurnal Sosiologi Dialektika* 18, no. 2 (January 24, 2024): 189–99. <https://doi.org/10.20473/jsd.v18i2.2023.189-199>.
- Azharuddin, Azharuddin. "Criminal Sanctions Against Perpetrators of Underhand Polygamy." *Jurnal Mediasas: Media Ilmu Syari'ah Dan Abwal Al-Syakhsyiyah* 6, no. 2 (June 20, 2024): 100–111. <https://doi.org/10.58824/mediasas.v6i2.88>.
- Bhandaru, Deepa. "Is White Normativity Racist? Michel Foucault and Post-Civil Rights Racism." *Polity* 45, no. 2 (April 2013): 223–44. <https://doi.org/10.1057/pol.2013.6>.
- Bhattarai, Prakash. "Discourse, Power and Truth: Foucauldian Perspective." *International Journal of English Literature and Social Sciences* 5, no. 5 (2020): 1427–30.

- <https://doi.org/10.22161/ijels.55.13>.
- Buberwa, Deodatus Katabaro. "Patriarchy Ideology and Workload Inequality within Household." *Journal of Human-Social Science* 16, no. 1 (2016): 1–9.
- Chan, Faye. "Religious Freedom vs. Women's Rights in Indonesia: The Case of Mohammad Insa." *Archipel* 83, no. 1 (2012): 113–45. <https://doi.org/10.3406/arch.2012.4341>.
- Conforti Rojas, María Cristina. "DISCOURSES, INSTITUTIONS AND KNOWLEDGE IN MICHEL FOUCAULT'S THOUGHT." *Universitas Philosophica* 34, no. 69 (2017): 105–19.
- Daming, Darna, Achmad Abubakar, and Muhsin Mahfudz. "Misunderstanding of Polygamy Verses in the Qur'an." *AL-MAIYYAH: Media Transformasi Gender Dalam Paradigma Sosial Keagamaan* 14, no. 2 (2021): 128–42. <https://ejurnal.iainpare.ac.id/index.php/almaiyyah/article/view/8665>.
- Deolalkar, D P. "VERBAL MEDITATION ON FOUCAULT'S NOTION OF DISCOURSE." *A GLOBAL JOURNAL OF HUMANITIES* IV, no. IV (2021).
- Dharnela, Lindra. "Menggali Teks, Meninggalkan Makna: Pemikiran Singkat Muhammad Syahrur Tentang Poligami." *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 42, no. 1 SE-Articles (June 1, 2008): 205–24. <https://doi.org/10.14421/ajish.v42i1.257>.
- Duncan, S. "Theorising Differences in Patriarchy." *Environment and Planning A: Economy and Space* 26, no. 8 (August 1, 1994): 1177–94. <https://doi.org/10.1068/a261177>.
- Fatimah Zuhrah, Muhammad Jailani, Mulia Siregar. "Islamic Legal Protection of Child's Rights in Polygamous Marriage in Indonesia." *Psychology and Education Journal* 58, no. 1 (January 20, 2021): 5195–5200. <https://doi.org/10.17762/pae.v58i1.1773>.
- Foucault, Michel. *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. Pantheon, 1980.
- Gautam, Bijaya. "Critiques of Development Using Foucault's Discourse and Power Theory." *Journey for Sustainable Development and Peace Journal* 2, no. 1 (February 28, 2024): 82–94. <https://doi.org/10.3126/jsdpj.v2i1.63253>.
- Hadi, Mukhammad Nur, Latifatul Islamiyah, and Cecep Soleh

- Kurniawan. "Conservatism on Islamic Legal Maxims: Judicial Interpretation of Polygamous Marriage at the Religious Courts of Mojokerto, Indonesia." *JIL: Journal of Islamic Law* 4, no. 2 (August 21, 2023): 172–96. <https://doi.org/10.24260/jil.v4i2.1637>.
- Hamim, Khairul. "Comparison Between Double Movement Theory and Nazariyyat Al-Hudud Theory on Polygamy Laws." *El-Mashlahah* 12, no. 2 (December 31, 2022): 190–209. <https://doi.org/10.23971/el-mashlahah.v12i2.4903>.
- Hasan, Hamka, Asep S. Jahar, Nasaruddin Umar, and Irwan Abdullah. "Polygamy: Uncovering the Effect of Patriarchal Ideology on Gender-Biased Interpretation." *HTS Teologiese Studies / Theological Studies* 78, no. 4 (December 20, 2022). <https://doi.org/10.4102/hts.v78i4.7970>.
- Hertina, Hertina, Muhammad Nurwahid, Haswir Haswir, Hendri Sayuti, Amri Darwis, Miftahur Rahman, Rado Yendra, and Muhammad Luthfi Hamzah. "Data Mining Applied about Polygamy Using Sentiment Analysis on Twitters in Indonesian Perception." *Bulletin of Electrical Engineering and Informatics* 10, no. 4 (August 1, 2021): 2231–36. <https://doi.org/10.11591/eei.v10i4.2325>.
- Humairoh, Rike. "Aturan Poligami Dalam Perundang-Undangan Di Indonesia: Studi Atas Pandangan Aktivis Perempuan Pada Lembaga Swadaya Masyarakat (LSM) Di Yogyakarta." *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 54, no. 1 (June 13, 2020): 105. <https://doi.org/10.14421/ajish.v54i1.665>.
- Jobe, Kevin S. "Foucault and the Telos of Power." *Critical Horizons* 18, no. 3 (July 3, 2017): 191–213. <https://doi.org/10.1080/14409917.2017.1293888>.
- Jose, Jim. *Biopolitics of the Subject: An Introduction to the Ideas of Michel Foucault*. Northern Territory University Press, 1998.
- Karimullah, Suud Sarim. "A Feminist Critique of the Practice of Polygamy in the Context of Islamic Law and Human Rights." *Indonesian Journal of Law and Islamic Law (IJLIL)* 6, no. 1 (June 17, 2024): 38–53. <https://doi.org/10.35719/ijlil.v6i1.354>.
- Khosiah, Nur, Reza Hilmy Luayyin, and David Prabowo. "POLIGAMI PERSPEKTIF MUHAMMAD ABDUH DAN

- MUHAMMAD SYAHRUR.” *Imtiyaz: Jurnal Ilmu Keislaman* 5, no. 2 (September 3, 2021): 77–86. <https://doi.org/10.46773/imtiyaz.v5i2.149>.
- Kohli, Ambika. “Forced and Underage Marriages in New Zealand: Some Reflections on Public and Private Patriarchy and Intersectionality.” *International Journal for Intersectional Feminist Studies: The Journal of Project Monma Research Centre* 1 (2015). [re/bitstreams/f0d7a937-0c0a-4f7c-9bbc-809bccea4028/content](https://bitstreams/f0d7a937-0c0a-4f7c-9bbc-809bccea4028/content).
- Kurniawan, Basuki, Edi Purwanto, and Sareef Tehtae. “BETWEEN ISLAMIC LAW AND HUMAN RIGHTS: AMBIGUOUS REGULATION REGARDING POLYGAMY IN INDONESIA.” *Al’Adalah* 25, no. 2 (December 30, 2022): 261–68. <https://doi.org/10.35719/aladalah.v25i2.312>.
- Lynch, Richard A. “Is Power All There Is? Michel Foucault and the” Omnipresence” of Power Relations.” *Philosophy Today* 42, no. 1 (1998): 65. <https://www.proquest.com/openview/e8234578202d6e58cb7eb713c7929f90/1?pq-origsite=gscholar&cbl=42445>.
- Ma’u, Dahlia Haliah. “The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 9, 2023): 669. <https://doi.org/10.22373/sjhk.v7i2.8519>.
- Martai, Martai. “Konsep Poligami Perspektif Rasyid Ridha Dan Muhammad Syahrur.” *Al-Adillah: Jurnal Hukum Islam* 3, no. 1 (January 25, 2023): 26–34. <https://doi.org/10.61595/aladillah.v3i1.489>.
- Martin, Graham P., and Justin Waring. “Realising Governmentality: Pastoral Power, Governmental Discourse and the (Re)Constitution of Subjectivities.” *The Sociological Review* 66, no. 6 (November 23, 2018): 1292–1308. <https://doi.org/10.1177/0038026118755616>.
- Mayasari, Lutfiana Dwi, Akmal Adi Cahya, and Ulfa Wulan Agustina. “Islamic Justice in Indonesia Polygamy Regulation on Asghar Ali Engineer’s Perspective.” *Al-Mazaahib: Jurnal Perbandingan Hukum* 9, no. 1 (September 12, 2021): 1. <https://doi.org/10.14421/al-mazaahib.v9i1.2292>.

- McKerrow, Raymie E. "Foucault's Relationship to Rhetoric." *Review of Communication* 11, no. 4 (October 2011): 253–71. <https://doi.org/10.1080/15358593.2011.602103>.
- Mudzhar, Mohamad Atho. "The Use and Misuse of Maslaha by the Court in Granting Polygamy Permissions." In *Proceedings of the 1st International Conference on Recent Innovations*, 1038–44. SCITEPRESS - Science and Technology Publications, 2018. <https://doi.org/10.5220/0009922510381044>.
- Muhajir, Muhammad, and Qurratul Uyun. "SEMA Waiver Number 3 of 2018 in the Case of Isbat for Polygamous Marriage: Study of Legal Considerations of Judges in Decision Number 634/Pdt.G/2018/PA.Mtr." *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 55, no. 2 (July 10, 2021): 263. <https://doi.org/10.14421/ajish.v55i2.1002>.
- Mukalafin, Izzat Abdika. "Maslahah Dalam Pertimbangan Hukum Hakim Pada Putusan Izin Poligami Nomor 0020/Pdt.G/2017/Pa.Mn." *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 1, no. 1 (January 26, 2021): 38–46. <https://doi.org/10.53754/iscs.v1i1.4>.
- Muslihun, Muslihun. "Pandangan Hakim Pengadilan Agama Terhadap Masalahah." *An-Nawa: Jurnal Studi Islam* 3, no. 1 (March 2, 2021). <https://doi.org/10.37758/annawa.v3i1.166>.
- Nikmatullah, Nikmatullah, and Emawati. "Conservative Muslim and Textual Interpretation of the Hadiths in Polygamy Propaganda in Indonesia." *Humanities, Arts and Social Sciences Studies*, September 23, 2024. <https://doi.org/10.69598/hasss.24.3.263308>.
- Noviana, Lia, Risma Wigati, and Nurulaini Halimatus Sakdiyah. "The Dynamics of Family Law Reform in Asia and Africa (Portrait of Polygamy Regulations in Indonesia, Malaysia, Pakistan, Morocco and Tunisia)." *Al-Syakhsyiyah: Journal of Law & Family Studies* 4, no. 2 (February 24, 2023): 187. <https://doi.org/10.21154/syakhsyiyah.v4i2.5895>.
- Nur, Muhammad, and Dhiauddin Tanjung. "Contextualization of Polygamy Law; Justification of Islamic Legal Principles against Positive Regulations in Indonesia." *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (July

- 31, 2024): 273–87.
<https://doi.org/10.32505/jurisprudensi.v16i2.8108>.
- Nurlaelawati, Euis. “Expansive Legal Interpretation and Muslim Judges’ Approach to Polygamy in Indonesia.” *Hawwa* 18, no. 2–3 (October 28, 2020): 295–324.
<https://doi.org/10.1163/15692086-12341380>.
- Pelu, Ibnu Elmi AS, Jefry Tarantang, Ahmad Fauzi, Muhammad Hafiz Badarulzaman, Ramdani Wahyu Sururie, and Syahrul Anwar. “Polygamy Law Reform Through the Development of the Aceh Qanun: A New Approach to Protecting the Rights of Women and Children in Indonesia.” *El-Mashlahah* 14, no. 1 (June 30, 2024): 149–68. <https://doi.org/10.23971/el-mashlahah.v14i1.7864>.
- Poorghorban, Younes. “On Michel Foucault: Power/Knowledge, Discourse, and Subjectivity.” *OKARA: Jurnal Bahasa Dan Sastra* 17, no. 2 (2023): 318–28.
- Rahman, Mostafizur, and Nahida Anwar. “Living between Brackets: Public-Private Patriarchal Violence and the Mental State of Women on Both Sides of Radcliffe Line.” *Journal of Social Studies (JSS)* 18, no. 2 (October 31, 2022): 279–90.
<https://doi.org/10.21831/jss.v18i2.49597>.
- Sam’ani, Sam’ani. “Maghza Nasr Hamid Abu Zayd’s Interpretation Concept as A Counter of Polygamy Pragmatism.” *Religia* 25, no. 2 (October 30, 2022).
<https://doi.org/10.28918/religia.v25i2.5156>.
- Sanauddin, Noor, Jamil Ahmad Chitrali, and Syed Owais. “Public Patriarchy: An Analysis of Women’s Access to Education, Work and Politics in Pakistan.” *Putaj Humanities & Social Sciences* 23, no. 1 (2016).
- Santoso, Dri, and Muhamad Nasrudin. “POLYGAMY IN INDONESIA AND ITS RELEVANCE TO THE PROTECTION OF WOMEN AND CHILDREN IN THE PERSPECTIVE OF ISLAMIC LAW PHILOSOPHY.” *AKADEMIKA: Jurnal Pemikiran Islam* 26, no. 1 (June 30, 2021): 121. <https://doi.org/10.32332/akademika.v26i1.2406>.
- Saprudin, Udin, J Junaedi, K Kerwanto, and Dito Anurogo. “LIMITING THE NUMBER OF POLYGAMIES TO

- REALIZE ECONOMIC JUSTICE: A HERMENEUTIC ANALYSIS OF MUHAMMAD SYAHRUR.” *QIST: Journal of Quran and Tafseer Studies* 2, no. 3 (September 28, 2023): 347–68. <https://doi.org/10.23917/qist.v2i3.2769>.
- Shahrur, Muhammad. *Al-Kitab Wa Al-Qur'an; Qira'ah Mu'ashirah*. Damaskus: al-Ahali lit-Thaba'ah wa an-Nasyr wa at-Tauji', 1990.
- . *Metodologi Fiqih Islam Kontemporer*. Edited by Terjemah: Sahiron Syamsuddin. Yogyakarta: eLSAQ Press, 2004.
- Supraptiningsih, Umi, Theadora Rahmawati, M. Mahrus Fauzi, and Laily Zainab. “G Gender Analysis: Of Polygamy Permit Based on the Reason of Benefit.” *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 2 (December 31, 2023): 365–76. <https://doi.org/10.19109/nurani.v23i2.16937>.
- Syahputra, Iswandi. “Post Media Literacy: Menyaksikan Kuasa Media Bersama Michel Foucault.” *Jurnal ASPIKOM* 1, no. 1 (January 9, 2017): 1. <https://doi.org/10.24329/aspikom.v1i1.4>.
- Syam, Masiyan M, and Faisal Haitomi. “Poligami Dalam Surah Al-Nisa (4): 3 (Aplikasi Pendekatan Kontekstual Abdullah Saeed).” *Jurnal El-Afkar* 9, no. 1 (2020).
- Syarif, Fajar. “THE CONTEXTUAL INTERPRETATION OF POLYGAMY VERSES IN THE QUR'AN.” *Journal of Islamic Studies and Humanities* 5, no. 1 (December 17, 2020): 1–13. <https://doi.org/10.21580/jish.v5i1.5212>.
- Tim Pangarusutamaan Gender DEPAG RI. *Pembaruan Hukum Islam Counter Legal Draft Kompilasi Hukum Islam*. Jakarta: Tim Pangarusutamaan Gender DEPAG RI, 2004.
- Turkel, Gerald. “Michel Foucault: Law, Power, and Knowledge.” *Journal of Law and Society* 17, no. 2 (1990): 170. <https://doi.org/10.2307/1410084>.
- Ulfa, Marlina, Norhayati Abu Bakar, and Muhammad Faizal Abd Rahman. “Analysis of Muhammad Shahrur's Thoughts on the Concept of Justice in Polygamy: A Perspective of Contemporary Islamic Law.” *AL-MUQARANA* 2, no. 2 (August 26, 2024): 110–18. <https://doi.org/10.55210/jpmh.v2i2.449>.
- Volokitina, Lidia. “Michel Foucault's Idea of 'Biopolitics' in the

Context of Contemporary Legal Theory Methodology.” *Legal Linguistics*, no. 27(38) (April 1, 2023): 136–40. [https://doi.org/10.14258/leglin\(2023\)2724](https://doi.org/10.14258/leglin(2023)2724).

Walby, Sylvia. *Patriarchy at Work: Patriarchal and Capitalist Relations in Employment, 1800-1984*. John Wiley & Sons, 2013.

———. “Theorising Patriarchy.” *Sociology* 23, no. 2 (1989): 213–34. <http://www.jstor.org/stable/42853921>.