



## Polygamy Legal Politics in Southeast Asian Muslim Countries: Legal Pluralism and Qur'anic Perspectives

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**Abstract:** Polygamy regulations are designed to protect the interests of Muslim families; however, ironically, in some Muslim countries, these regulations have been associated with triggering domestic violence. This study aims to examine the legal politics of polygamy in Southeast Asian Muslim countries: Indonesia, Malaysia, and Brunei Darussalam using a legal pluralism approach alongside Qur'anic perspective. The methodology employed is qualitative with a descriptive-interpretative approach. The findings indicate that these three countries regulate polygamy through two reforms: intra-doctrinal reforms that accommodate religious and cultural norms and extra-doctrinal reforms encompassing legal frameworks, judicial systems, and institutional structures. Three main factors influence these legal policies: religious understanding, local traditions, and political and social dynamics. As *ulū al-amri* (authoritative leaders), the governments of these countries are committed to regulating polygamy to benefit families and children by integrating Islamic values, local traditions, and colonial legal influences. These regulations align with the Qur'anic message that permits polygamy under certain conditions and strict requirements, aiming to achieve marital goals of tranquility (*sakinah*), affection (*mawaddah*), and compassion (*rahmah*). However, stricter supervision and substantive legal reforms are necessary to reinforce these requirements and impose sanctions on violators.

**Keywords:** Polygamy Legal Politics, Southeast Asian Muslim Countries, Legal Pluralism, Qur'anic Perspectives

**Abstrak:** Regulasi poligami dirancang untuk melindungi kepentingan keluarga Muslim; akan tetapi, ironisnya, di beberapa negara Muslim, peraturan ini justru diasosiasikan sebagai pemicu kekerasan dalam rumah tangga. Penelitian ini bertujuan untuk mengkaji politik hukum poligami di negara-negara Muslim Asia Tenggara: Indonesia, Malaysia, dan Brunei Darussalam dengan menggunakan pendekatan pluralisme hukum dan Alquran. Metodologi yang digunakan adalah kualitatif dengan pendekatan deskriptif-interpretatif. Temuan penelitian menunjukkan bahwa ketiga negara tersebut mengatur poligami melalui dua jenis reformasi: reformasi intra-doktrinal yang mengakomodasi norma-norma agama dan budaya, dan reformasi ekstra-doktrinal yang mencakup kerangka hukum, sistem peradilan, dan struktur kelembagaan. Tiga faktor utama yang mempengaruhi kebijakan hukum ini yaitu: pemahaman keagamaan, tradisi lokal, dan dinamika politik dan sosial. Sebagai *ulū al-amri*, pemerintah di negara-negara ini berkomitmen untuk mengatur poligami

untuk kemashlahatan keluarga (istri dan anak-anak) dengan mengintegrasikan nilai-nilai Islam, tradisi lokal, dan pengaruh hukum kolonial. Regulasi ini selaras dengan pesan Al-Qur'an yang mengizinkan poligami dalam kondisi tertentu dan persyaratan yang ketat, yang bertujuan untuk mencapai tujuan pernikahan yaitu ketenangan (*sakinah*), rasa kasih (*mawaddah*), dan rasa sayang (*rahmah*). Akan tetapi, pengawasan yang lebih ketat dan reformasi hukum yang substantif diperlukan untuk memperkuat persyaratan ini dan menjatuhkan sanksi bagi para pelanggarnya.

**Kata Kunci:** Politik Hukum Poligami, Negara Muslim Asia Tenggara, Pluralisme Hukum, Perspektif Al-Qur'an

## Introduction

The legal politics of polygamy in Indonesia, Malaysia, and Brunei Darussalam are intriguing subjects of study. Polygamy continues to be a topic of discussion, both in terms of its ideal conceptual framework (as found in Islam and positive law) and its practical implementation. Several studies revealed that polygamy regulations seek to protect women and children to ensure family welfare.<sup>1</sup> Yet, people still think that these regulations infringe on their rights, particularly concerning gender equality, and result in family harmony disruption and various domestic violence (DV).<sup>2</sup> Furthermore, according to the Indonesian National Commission on Violence Against Women, polygamy is one of the leading causes of domestic violence,<sup>3</sup> occurring four times more frequently than in monogamous marriages.<sup>4</sup> The state must establish regulations that balance religious freedom with legal protection for women and children.

We obtained that research related to polygamy can be categorized as follows: polygamy in Islamic law (as examined by Karimullah),<sup>5</sup> polygamy in positive law (as discussed by Masri),<sup>6</sup> and practice and impact of polygamy (as explored by Dozan).<sup>7</sup> From these studies, there has yet to be research specifically addressing the legal politics of polygamy in Muslim-majority countries in Southeast Asia.

This study focuses on three key aspects: the regulation of polygamy in Indonesia, Malaysia, and Brunei Darussalam, the factors influencing the formulation of polygamy laws, and the implications of polygamy legal politics in these three countries on the protection of wives and children. This study is relevant in the context of Muslim-majority countries and contributes to the global discussion on family law, human rights, and gender justice despite minor variations in their interpretations. The diversity in polygamy legal politics in Indonesia, Malaysia, and Brunei Darussalam may closely relate to each country's understanding of religion, local culture and traditions, and socio-political dynamics.

<sup>1</sup> Fathinuddin Fathinuddin et al., "Women's Post-Divorce Rights in Malaysian and Indonesian's Court Decisions," 2023, <https://doi.org/10.15408/ajis.v23i1.27967>; Mohd Anuar Ramli et al., "The Quest for Third Gender Equality: Challenges and Implications for Islamic Law and Muslim Women's Sustainability in Malaysia," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 295–310, <https://doi.org/10.15408/ajis.v24i2.37746>.

<sup>2</sup> Siti Hikmah, "Fakta Poligami Sebagai Bentuk Kekerasan," April 2012.

<sup>3</sup> Muhammad Bernie, "Komnas Perempuan Sebut Poligami Salah Satu Penyebab KDRT," *Tirto. Id*, December 15, 2018.

<sup>4</sup> Fitri Wulandari, "Jumlah Kasus KDRT Akibat Poligami 4 Kali Lebih Banyak Dibanding Monogami," *Tribunnews.Com*, April 14, 2021.

<sup>5</sup> Suud Sarim Karimullah, "Poligami Perspektif Fikih Dan Hukum Keluarga Negara Muslim," *Journal of Islamic Family Law* 2, no. 1 (2021).

<sup>6</sup> Esther Masri, "Poligami Dalam Perspektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (KHI)," *Jurnal Krtha Bhayangkara* 2, no. 13 (2019).

<sup>7</sup> Wely Dozan, "Fakta Poligami Sebagai Bnetuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir Isu Gender," *Marwah Jurnal Pere* 19, no. 2 (2021): 131–47.

This qualitative study employs a descriptive and interpretive method, utilizing the research paradigm of constructivism and the perspective of legal pluralism and the Qur'an. This article focuses on examining the legal politics of polygamous marriage in Muslim countries within the Southeast Asian region. The primary data sources are legal regulations on polygamy in three countries: Indonesia (Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI)), Malaysia (Islamic Family Enactment), and Brunei Darussalam (Islamic Family Law). Additionally, secondary sources include literature on legal pluralism, Quranic verses and their interpretations related to polygamy, and findings from previous studies. We analyze data through three stages: description, understanding, and approach from the perspective of legal pluralism and the Qur'an. These three stages of analysis form the basis for conclusions.

## Legal Politics

There are several definitions of legal politics. Mahfud MD states legal politics as legal policy, which refers to the state's official stance regarding which laws will be enacted, repealed, or not enforced to achieve national objectives.<sup>8</sup> Meanwhile, Satjipto Rahardjo describes legal politics as the fundamental policy to achieve a specific social goal through particular laws within society.<sup>9</sup> Similarly, Koesno defines legal politics as the state's basic policy on formulating, implementing, and enforcing rules.<sup>10</sup> Thus, legal politics is a legal policy that determines the direction, structure, and substance of the law its implementation and enforcement to achieve the objectives of the state.

The legal policy concerning the regulation of polygamy generally encompasses the following elements: First, the primary objective of polygamy regulation is to safeguard the rights of women and children, prevent injustice and domestic violence, and deter irresponsible or abusive practices of polygamy. Second, such regulation is codified through formal legal instruments. For instance, Indonesia implemented the law through the 1974 marriage law and the compilation of Islamic law (KHI), Malaysia through the Islamic Family Enactment, and Brunei through the Islamic Family Law. Third, the regulatory mechanism typically involves a system of state authorization whereby individuals seeking to practice polygamy must obtain permission from designated authorities, such as the Religious Court or the Syariah Court. The imposition of alternative and cumulative conditions and ongoing state oversight and limitations accompany this. Thus, legal politics represents the state's effort to regulate the practice of a particular law (such as polygamy) to align with societal values, including religious, social, and legal principles, while ensuring the safeguarding of human rights and justice for all parties involved. By studying legal politics, one can understand the political struggles that shape laws based on the assumption that law is a product of politics.

## Legal Pluralism

Legal pluralism is a concept that recognizes the existence of more than one legal system within a society. It encompasses state, customary, religious, and other forms of law that may coexist within a single community. Among the key scholars in this field is Werner Menski, who explains legal pluralism

<sup>8</sup> Moh Mahfud MD, *Politik Hukum Di Indonesia*, 10th ed. (Rajawali Pers, 2020), 1.

<sup>9</sup> Satjipto Raharjo, *Ilmu Hukum* (Citra Aditya Bakti, 2006), 352.

<sup>10</sup> Mohammad Koesno, *Politik Hukum Dan Pembangunan* (UI Press, 2005).

as an approach to understanding the correlation between state law and societal characteristics.<sup>11</sup> John Griffiths also contributes to this discourse by asserting that law should be understood as a broader social phenomenon, incorporating various norms and practices that operate within society. Griffiths classifies legal pluralism into weak and strong pluralism.<sup>12</sup> Meanwhile, Sally Merry explores how multiple legal systems function simultaneously within diverse and complex cultures.<sup>13</sup>

Why Does Legal Pluralism Occur? First, historical factors: Legal pluralism emerges due to cultural diversity, including ethnic, language, and religious differences.<sup>14</sup> In reality, there is a need to acknowledge and respect different legal traditions embedded in social life.<sup>15</sup> Colonialism also contributed to the formation of legal pluralism. Customary or religious law does not always align with state law, making it necessary to accommodate them within the state legal system.<sup>16</sup> Second, social necessity: Society demands substantive justice where a legal system aligns more closely with its realities. By implementing Islamic marital law, the norms and traditions they uphold resolve family disputes. This necessity encourages recognizing religious, customary, and other legal systems.<sup>17</sup> Third, the legal approach: several states recognize dual legal systems, such as religious law (e.g., marriage law) and customary law (e.g., agrarian law), alongside positive law. This situation aligns with Griffiths' statement that legal pluralism is inevitable, whereas legal centralization is a mythos, utopia, claim, and fantasy.<sup>18</sup> Tamanaha stated that: "Legal pluralism is everywhere."<sup>19</sup> Thus, the diversity of legal systems within a country reflects the legal needs of a pluralistic society.

### **Polygamy in the Qur'anic Perspective**

Two verses of the Qur'an are the basis of polygamy: and (4:129).

"If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one or (a captive) that your right hands possess. That will be more suitable to prevent you from doing injustice" (An-Nisā'/4:3)

"Ye are never able to be fair and just as between women even if it is your ardent desire: but turn not away (from a woman) altogether to leave her (as it were) hanging (in the air). If ye come to a friendly understanding and practice self-restraint, God is Oft-Forgiving Most Merciful". (An-Nisā'/4:129)

Scholars have differing views on the interpretation of these verses. These differences mainly revolve around the maximum number of wives allowed and the legal ruling on polygamy.

<sup>11</sup> Werner Menski, *Comparative Law in a Global Context: The Legal System of Asia and Afrika* (Cambridge University Press, 2006), 187.

<sup>12</sup> John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (January 1986): 5–6.

<sup>13</sup> Merry Sally Engle, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 870.

<sup>14</sup> Rr Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints" 23, no. 1 (2023): 43.

<sup>15</sup> Irwansyah Rika Afrida Yanti, "Pluralisme Hukum di Indonesia," *Jurnal Cerdas Hukum* 11 (2023): 52.

<sup>16</sup> Belinda Pudjilianto and Emy Handayani, "Penerapan Pluralisme Hukum dalam Masyarakat" 11 (2022), : <https://ejournal3.undip.ac.id/index.php/dlr/>.

<sup>17</sup> Zuhdi Arman and Agus Riyanto, "Paradigma Berpikir yang Menekankan mengembangkan Pluralisme Hukum sebagai Pondasi Hukum Masa Depan Indonesia," *Fundamental: Jurnal Ilmiah Hukum* 12, no. 2 (December 31, 2023): 403, <https://doi.org/10.34304/jf.v12i2.117>.

<sup>18</sup> Winardi Winardi, "Eksistensi dan Kedudukan Hukum Adat dalam Pergumulan Politik Hukum Nasional," *Widya Yuridika* 3, no. 1 (May 24, 2020): 95, <https://doi.org/10.31328/wy.v3i1.1364>.

<sup>19</sup> Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, vol. 30 (Sydney Law Review, 2008), 375.

First, the Maximum Number of Wives: Most scholars agree that a man may marry a maximum of four wives, as stated by Al-Ṭabarī.<sup>20</sup> However, a less popular view suggests a maximum of nine wives, based on an interpretation that sums up the numbers mentioned in the verse (2+3+4 = 9), as argued by Al-Zamakhsharī.<sup>21</sup> Second, the Legal Ruling on Polygamy. There are two prominent scholarly opinions regarding the ruling on polygamy: Permissibility classical and contemporary scholars generally agree that polygamy is allowed under Islamic law.<sup>22</sup> Prohibition (*ḥarām li-ghayrih*) some scholars however, argue that Muslims should avoid polygamy due to the potential negative social consequences it may cause.<sup>23</sup> Therefore, a man who intends to practice polygamy must meet strict conditions, including physical, financial, and emotional capacity, as well as the ability to treat all wives fairly.

Scholars have different opinions regarding the requirements for polygamy: 1. Justice – Some scholars, such as Al-Marāghī, emphasizes material and physical fairness according to one's capability.<sup>24</sup> However, for Husein Muhammad, justice in polygamy should not be limited to material fairness (*al-qist*) but must also include psychological and emotional equity (*al-'adl*).<sup>25</sup> 2. Emergency Situations: Muhammad Abduh states that polygamy is only in emergencies where the benefits outweigh the harms. 3. Specific conditions related to the wife: only certain conditions may justify polygamy, such as infertility, chronic illness, inability to bear children, or inability to engage in marital relations. However, Shahrur argues that these conditions are illogical, as men can also face similar issues. Shahrur adds another condition: any wife beyond the first must be a widow with orphaned children.<sup>26</sup> From the discussion above, it is evident that most scholars interpret these two Qur'anic verses as allowing polygamy under reliable circumstances, ensuring it serves the well-being of the family.

## Polygamy Regulations

### Legal Structure of Polygamy in Indonesia, Malaysia, and Brunei Darussalam

Aspect	Indonesia	Malaysia	Brunei Darussalam
Legal Basis	Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI)	Islamic Family Enactment <sup>27</sup>	Islamic Family Law (Chapter 217)
Legal Principle	Monogamy, with exceptions	Allows polygamy under certain conditions.	Allows polygamy under certain conditions

<sup>20</sup> Al-Thabari, Ibnu Jarir, *Jāmi' al-Bayān Fī Tafsīr al-Qur'ān* (Muassah al-Risālah, 2000M/1420H), vol. VII, 351.

<sup>21</sup> Al-Zamakhshari, *Al-Kasysyāf 'an Ḥaqāiq al-Tanzīl Wa 'Uyūn al-Aqāwīl Fī Wujūh al-Ta'wīl*, 3rd ed. (Bairut: Dār al-Kitāb al-'Arabī, 1407H), vol. I, 468.

<sup>22</sup> Fathonah, "Telaah Poligini: Perspektif Ulama Populer Dunia (Dari Ulama Klasik Ulama Kontemporer)," *Al-Hikmah* 5, no. 1 (2015): 34–35.

<sup>23</sup> Mulia, Siti Muzdah, *Islam Menggugat Poligami* (Jakarta: PT Gramedia Utama, n.d.), 193–94.

<sup>24</sup> Al-Maraghi, Ahmad Musthafa, *Tafsīr Al-Maraghi* (Bairut: Dār al-Fikr, 2006), vol. III, 103.

<sup>25</sup> Ach. Subairi, Sri Lumatus Sa'adah, and Wildani Hefni, "Poligami dalam Pandangan KH. Husein Muhammad," *Al Qalam* 18, no. 5 (August 13, 2024): 3190, <https://doi.org/10.35931/aq.v18i5.3706>.

<sup>26</sup> Muhammad, Syahrur, *Naḥw Uṣūl Jadīdah Li Al-Fiqh al-Islāmī; Fiqh al-Mar'ah* (Damaskus: Al-Ahalī li Al-Ṭibā'ah wa al-Nasyr wa al-Tauzī', 2000), 304.

<sup>27</sup> Enakmen Wilayah Persekutuan, "Akta Undang-undang Keluarga Islam (Wilayah-wilayah Persekutuan) 1984 (Akta 303)," 203 § (n.d.).



Aspect	Indonesia	Malaysia	Brunei Darussalam
Requirements -	<p>Consent from the wife/wivestan</p> <p>The wife is in certain conditions, such as being unable to fulfill her marital duties, having a permanent physical incapacity or an irredeemable disease, or being incapable to have infants;<sup>28</sup></p> <p>The husband must be financially capable of supporting all wives and children;</p> <p>Ensure that the husband will be just to all wives and children (art. 5 (1))</p> <p>Permission from the religious court is required (art. 4 (2)).</p> <p>Civil servants need approval from their superior</p>	<p>Consent from the wife/wives</p> <p>Evidence that the wife is physically incapable, mentally ill, or refuses to fulfill marital rights.</p> <p>Proof that the husband can financially support all wives and children.</p> <p>Secure that the husband will be just to all wives according to Islamic law.</p> <p>Assurance that polygamous marriage will not harm to the wives (chap. II, Seksyen 23).</p>	<p>Consideration of the rights of the previous wife</p> <p>Proof of financial capability</p> <p>Guarantee of justice for all wives</p> <p>Approval from the Sharia Cour Proof of financial capability</p> <p>Guarantee of justice for all wives</p> <p>Approval from the Sharia Court</p>
Procedure	<p>The husband must request to the religious court.</p> <p>He has evidence of financial capability and guarantees fairness (art. 4 (2)).</p>	<p>The husband must get approval from the state's Sharia Court.</p> <p>Interviews or evaluations often involve the first wife</p>	<p>Approval from the Sharia Court<sup>29</sup></p> <p>Proof of the husband's capability to support his wives reasonably and financially</p> <p>Consideration of the Rights of the Previous Wife.</p>
Sanctions	<p>Fine for officials violating the rules, with a maximum penalty of IDR 7,500 (arts. 3 &amp; 10 (3)).</p> <p>No specific imprisonment for polygamy violations</p> <p>Marriage is legally invalid if conducted without permission</p>	<p>A fine of up to RM 1,000 or imprisonment of up to 6 months for a husband who remarries without permission</p> <p>Fine or imprisonment, or both, for those violating polygamy regulations</p>	<p>Violators of polygamy regulations are subject to a fine of up to \$2,000, imprisonment of up to 6 months, or both.<sup>30</sup></p>

<sup>28</sup> Pemerintah Pusat Indonesia, "Undang-undang (UU) Nomor 1 Tahun 1974 tentang Perkawinan," Pub. L. No. Undang-Undang, 1 26 (1974), art. 4 (2), <https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974>.

<sup>29</sup> "Law of Brunei: Islamic Family Law," Pub. L. No. 217, 92 (2012), art. 23 (1), [https://www.agc.gov.bn/agc%20images/laws/act\\_pdf/cap217.pdf](https://www.agc.gov.bn/agc%20images/laws/act_pdf/cap217.pdf).

<sup>30</sup> B.I.R.O.6/2012, art. 123.

From the data on polygamy regulations in the three countries above, the legal structure of polygamy in these countries clearly shows both likenesses and distinctions. The parallels lie in the rules and requirements, while the most significant differences are in the procedures and enforcement of sanctions. These regulations indicate that the legal policies of the three countries have undergone reforms in polygamy law. On the one hand, the regulations continue the provisions of *fiqh* law and certain local traditions that do not prohibit polygamy, especially as Suud has stated regarding the imposition of sanctions. On the other hand, these regulations respond to the demands of modern society, particularly advocating the rights of women and children, while also adopting Western colonial legal influences such as Dutch law in Indonesia and British law in Malaysia and Brunei Darussalam. Thus, the polygamy regulation tends to involve intra and extra-doctrinal reforms. In this case, the reforms are applied to rules and norms and extend to legal approaches, judicial systems, and institutional structures.

How can polygamy regulations be viewed from the perspective of legal pluralism? These regulations, from a legal-political standpoint, represent state policies aimed at controlling the misuse of polygamous practices, which are accepted both religiously and culturally,<sup>31</sup> while also protecting women and children.<sup>32</sup> In legal pluralism, polygamy regulations can be understood, as John Griffiths describes, as a broad social phenomenon that accommodates various societal norms and practices.<sup>33</sup> Therefore, this legal reform is carried out to uphold Islamic values,<sup>34</sup> accommodate customary law, and incorporate elements of colonial legal heritage.

The governments of these three countries, as *ulul amri*, permit polygamy based on the Qur'an (*An-Nisā'* 4:3 and 4:129). These verses emphasize the difficulty of achieving perfect justice, thereby recommending monogamy as a preferable option. All three countries have established justice as the main requirement for polygamy. For instance, Indonesia requires proof of justice and the wife's agreement, Malaysia emphasizes the husband's financial ability to be fair, and Brunei Darussalam requires evidence of justice and economic readiness. These regulations reflect efforts to guard the wife's and children's rights, aligning with the goal of marriage in Islam to create a family based on *sakīnah* (tranquility), *mawaddah* (love), and *rahmah* (compassion). Nevertheless, the polygamy regulations in these three countries remain relatively lenient compared to some other Muslim-majority nations, such as Tunisia, which prohibits polygamy because it enslaves women and contradicts the monogamous principles of marriage in the Qur'an.<sup>35</sup> As a result, some scholars argue that the regulations in these three countries remain discriminatory toward wives. They suggest additional conditions, such as limiting polygamous marriages to widows with orphaned children following the example of the Prophet Muhammad.<sup>36</sup>

<sup>31</sup> Rahmin Talib Husain et al., "Happiness Permissibility: Negotiating Hadith on Polygamy as Perfection of Worship in Wahdah Islamiyah Muslim Women," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 2 (2024): 329–55, <https://doi.org/10.19105/al-lhkam.v19i2.11352>.

<sup>32</sup> Zaleha Kamaruddin and Raihanah Abdullah, "Protecting Muslim Women against Abuse of Polygamy in Malaysia: Legal Perspective," *Hawwa* 6, no. 2 (2008): 176–201, <https://doi.org/10.1163/156920808X347250>.

<sup>33</sup> Griffiths, "What Is Legal Pluralism?," 5–6.

<sup>34</sup> All-Mu'izz Abas and Mohd Al Adib Samuri, "Islamic Legal Perspectives on Refugee Protection and Welfare: A Case Study of Malaysia," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (June 30, 2024): 141–60, <https://doi.org/10.18860/j-fsh.v16i1.26507>.

<sup>35</sup> John L Esposito, *Women in Muslim Family Law* (Syracuse University Press, 2001), 92.2001

<sup>36</sup> Hervin Yoki Pradikta, Hasanuddin Muhammad, and Musda Asmara, "Poligami Di Malaysia Dan Indonesia Serta Relevansinya Dengan Pemenuhan Hak Gender," *Al-Istinbath* 5, no. 2 (November 30, 2020): 213.

## Factors Influencing Polygamy Legal Policies

Several factors influence the legal policies on polygamy in the three countries: Indonesia, Malaysia, and Brunei Darussalam. These factors include religious understanding, local traditions, customs, and political and social influences.

### 1. Religious Understanding

Religious beliefs, such as Islam, shape societal views on the practice of polygamy. This fact is evident among some converts to Islam (*muallaf*) who accept polygamy, despite it conflicting with their previous values.<sup>37</sup> Polygamy is sometimes used as a propaganda tool by conservative Muslim groups on social media, as seen with Dauroh Poligami Indonesia (DPI) and the Indonesian Polygamy Forum. These groups portray polygamy as an indication of personal virtue and an Islamic lifestyle that brings social and spiritual fulfillment.<sup>38</sup> In Malaysia, Global Ikhwan views polygamy as a fundamental principle of marriage in Islam. This group believes that polygamy aims to create family harmony with both spiritual and social values.<sup>39</sup> However, in reality, polygamous marriages do not always bring the happiness they imagine. Many women in these marriages do not wish for their children to practice polygamy, fearing that they would experience the same hardships.<sup>40</sup> Bujang and Ramlee state that Islam permits polygamy for the well-being of all parties involved, including families, society, and the state. Some members of society in Brunei view polygamy positively, considering it a solution to marital issues, such as when a wife refuses to divorce due to mutual consent between the husband and the prospective wife.<sup>41</sup> Others, however, perceive polygamy negatively, believing it destroys families and neglects financial responsibilities toward the household. Hanii and Matali highlight domestic violence statistics from 2016 to 2021, reporting that 39 cases were related to polygamous marriages.<sup>42</sup> Thus, public perceptions of polygamy in the three countries reflect the complexity of the issue.

### 2. Local Traditions and Customs

Local traditions and culture can influence polygamy laws in a country. In some communities, polygamy is accepted and considered normal, such as in Siakin Village, Bangli, Bali. This society acknowledges polygamous marriages through a “beakonan” ceremony.<sup>43</sup> However, in other communities, such as in Penglipuran Traditional Village, Bangli, Bali prohibits polygamy and considers it a violation of customary norms. Offenders face gradual sanctions, including a formal summons, the

<sup>37</sup> Suprijati Sarib et al., “Polygamy among Muallaf in Manado: Islamic Legal Perspectives and Social Challenges,” *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (September 9, 2024): 241, <https://doi.org/10.31958/juris.v23i2.12307>.

<sup>38</sup> 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.

<sup>39</sup> Farrah Wahida Mustafar and Adam Badhrulhisham, “Konsep Poligami Mengikut Perspektif Para Isteri dalam Jemaah Global Ikhwan Sdn. Bhd.,” 2018.

<sup>40</sup> Sayed Muhammad Ichsan, S Fil, and M Ag, “Teologi Berbasis Ekonomi (Darul Arqam - Pt. Global Ikhwan); Studi atas Strategi Dakwah Ashari Ibn Muhammad,” n.d., 10.

<sup>41</sup> Nabilah Bujang and Nurzakiah Ramlee, “Perspektif Masyarakat Terhadap Faktor Poligami Society’s Perspective on The Factor of Polygamy Nabilah Binti Hj Bujang1 , Dr Hj Nurzakiah Binti Hj Ramlee,” *Jurnal Sultan Alauddin Sulaiman Shah* 8, no. 2 (2021): 122–34.

<sup>42</sup> Nazihah Hanni and Azme Matali, “Faktor Krisis Rumah Tangga Di Negara Brunei Darussalam (Factors Contributing to Marriage and Relationship Breakdown in Brunei Darussalam),” *Asian People Journal (APJ)* 6, no. 1 (April 27, 2023): 100, <https://doi.org/10.37231/apj.2023.6.1.401>.

<sup>43</sup> I Wayan Swandana and Ni Nyoman Mariadi, “Sistem Perkawinan Poligami di Desa Adat Siakin Kecamatan Kintamani Kabupaten Bangli,” *Kertha Widya* 8, no. 1 (January 5, 2021): 97–117, <https://doi.org/10.37637/kw.v8i1.640>.



construction of a separate hut for the offender, and eventual social exclusion.<sup>44</sup> In Malaysia, Ismail Uno and Dedi Sumanto stated that women are often in a vulnerable position, becoming victims of the existing legal framework, while husbands receive priority in having their rights fulfilled, especially in terms of sexual needs. Historically, polygamy was intended for religious outreach (dakwah), protection of widows, and care for orphans.<sup>45</sup> Brunei Darussalam adopts a collaborative approach between customary law and Islamic law. Brunei views family law as an *ijtihadiah* issue based on *mashlahah* (public interest). Rohmah and Huda mention that family law reform in Brunei Darussalam has an adaptive typology involving madhhab unification and semi-progressive intra and extra-doctrinal reforms.<sup>46</sup> The societies in these countries tend to be patriarchal, where men hold dominant roles in the family and culture, and men (husbands) have the right to polygamy.

### 3. Political and Social Influence

Among the factors that play a role in the history of lawmaking in a country, including regulations on polygamy, are political and social factors. In the 1970s, in Indonesia, there was a debate between pro and anti-polygamy groups. Some people viewed polygamy as part of religious freedom and tradition. However, others saw polygamy as having negative impacts on the well-being of women and children,<sup>47</sup> harming them both psychologically and economically. Eventually, the government adopted a compromise approach, allowing polygamy with certain restrictions. In Malaysia, there has been debate among political parties regarding the rights of women in polygamous marriages. While some groups support polygamy, such as those sponsored by the al-Arqam sect, which later established the Polygamy Club in 2009,<sup>48</sup> they also advocate for legal reform to protect the rights of women and children rights in polygamy. Some see the permissibility of polygamy as strengthening the right of husbands to sexual fulfillment rather than being based on the prophetic principle of protecting widows and orphans.<sup>49</sup> The family law in Brunei accommodates Islamic law (more specifically, the Shafi'i school of thought), along with customary and Western law. The reform of polygamy law has taken the form of codification, with judges involved in safeguarding the rights of wives and children.<sup>50</sup>

Accordingly, several factors, including religious understanding, local traditions and customs, and political and social conditions, influence polygamy laws in Indonesia, Malaysia, and Brunei Darussalam. These differing views on polygamy in these countries led to political compromises, with policies restricting its practice through specific requirements, procedures, and penalties for violations. These legal policies are defensible from religious and customary law perspectives, as these countries generally embrace legal pluralism. Furthermore, from the perspective of the Quran, legal policies on polygamy aim to regulate the husband-wife relationship in a marriage, addressing both the fundamental and financial aspects of creating a *sakinah*, *mawaddah*, and *rahmah* family.

<sup>44</sup> Ni Luh Sriyani and V. Indah Sri Pinasti, "Sanksi Adat Karang Memadu sebagai Upaya Antisipasi Perkawinan Poligami di Desa Adat Penglipuran, Kecamatan Bangli, Kabupaten Bangli, Provinsi Bali," *Dimensia: Jurnal Kajian Sosiologi* 11, no. 2 (March 14, 2023): 32–74, <https://doi.org/10.21831/dimensia.v11i2.59268>.

<sup>45</sup> Ismail Uno and Dedi Sumanto, "Poligami Di Malaysia Serta Relevansinya Dengan Pemenuhan Hak Gender," *As-Syams: Journal Hukum Islam* 2, no. 2 (2021): 41–51.

<sup>46</sup> Ulin Nadya Rifatur Rohmah and Miftahul Huda, "Ketentuan Hukum Keluarga di Brunei Darussalam dan Indonesia," n.d.

<sup>47</sup> Nur Fathurrahman et al., "Perkawinan Poligami Dalam Hukum Positif di Indonesia" 01, no. 12 (2024).

<sup>48</sup> VIVA Digital Network, "Ada Klub Poligami di Malaysia," Oktober 2009, <https://www.viva.co.id/berita/nasional/93901-siapa-mau-gabung-klub-poligami-di-malaysia>.

<sup>49</sup> Pradikta, Muhammad, and Asmara, "Poligami Di Malaysia Dan Indonesia Serta Relevansinya Dengan Pemenuhan Hak Gender."

<sup>50</sup> Arif Sugitanata Arif, "Hukum Keluarga Islam di Brunei Darussalam," *Al-Qadha : Jurnal Hukum Islam dan Perundang-Undangan* 8, no. 1 (July 12, 2021): 1–12, <https://doi.org/10.32505/qadha.v8i1.2275>.

## **Legal Implications of Polygamy on the Protection of Wives and Children**

The legal politics surrounding polygamy in these countries have significant implications for the protection of wives and children, especially regarding their welfare, justice, and rights. In Indonesia, the strict procedures concerning polygamy are to protect wives from exploitation and to protect children from family conflict and unfair distribution of financial support. In practice, polygamy can lead to injustice for wives and children, negatively impacting the social and economic welfare of the family, which may cause domestic conflicts.<sup>51</sup> Many polygamy cases have been harmful and oppressive to women.<sup>52</sup> This finding supports Ismail, who concludes that the lack of strict enforcement of penalties contributes to public servants' non-compliance with polygamy regulations.<sup>53</sup> The polygamy regulation in Malaysia was enacted to prevent issues concerning wives and children.<sup>54</sup> But, the imbalance of rights between the first and second wives is often an issue. Polygamy may result in an emotional and social burden on children if conflicts between wives are unmanageable.<sup>55</sup> The regulation of polygamy in Brunei Darussalam takes a stricter approach to ensure that the husband can be just and responsible.<sup>56</sup> As a result, wives and children are better protected, as the court's mechanisms are more organized and disciplined. On the other hand, the implementation of polygamy regulations is frequently helpless and fails to guard the rights of women and children.

Thus, these three countries have made political commitments to regulate polygamy to protect wives and children. From the legal pluralism perspective, there is an interaction between Islamic, national, and customary law regulating polygamy. In Indonesia, polygamy is regulated through national law with the influence of Islamic and customary law, providing opportunities for women to protect their rights through national legal channels. In Malaysia, the Shariah Court determines polygamy cases, which can create imbalances in the protection of wives and children if the implementation of the Shariah Court is inadequate. In Brunei Darussalam, despite the dominance of Shariah law, it heavily relies on the husband's awareness. However, clear penalties are more effective in protecting wives and children. From the perspective of the Quran, it is evident that polygamy regulations are for the welfare of the family. If, in practice, it leads to harm, then reforms may be needed regarding the requirements, procedures, sanctions, and law enforcement.

## **Conclusion**

This research revealed that Indonesia, Malaysia, and Brunei Darussalam have taken political steps to regulate polygamy. These regulations aim to promote welfare, specifically for the rights of women and children. However, they can have both constructive and detrimental effects. The constructive aspect is the legal clarity regarding the requirements, procedures, and sanctions for violators. On the detriment side, there is undeniable discrimination and injustice in economic welfare and legal

<sup>51</sup> Ahmad Muhamad Musain Nasoha et al., "Poligami di Indonesia: Apakah Sejalan dengan Nilai-nilai Pancasila dan Hukum Nasional?" 1, no. 2 (2024): 101.

<sup>52</sup> Risma Handayani Lubis and Faisar Ananda, "Kajian Poligami Melalui Pendekatan Transdisipliner (Antropologi, Hukum Positif Dan Filsafat)" 4, no. 1 (2024): 4551-65.

<sup>53</sup> Yusuf Ismail, "Praktik Poligami Pegawai Negeri Sipil di Indonesia Dalam Teori Emile Durkheim," *ADHKI: Journal of Islamic Family Law* 5, no. 1 (July 24, 2023): 91-102, <https://doi.org/10.37876/adhki.v5i1.124>.

<sup>54</sup> Muslim Ibrahim and Muhammad Safiq Imran Bin Samsudin Muhammad Safiq Imran Bin Samsudin, "Prosedur Poligami di Malaysia (Analisis Akta Undang-Undang Keluarga Islam Wilayah-Wilayah Persekutuan)," *SAMARAH* 2, no. 1 (May 5, 2018): 1.

<sup>55</sup> Daudy Buhari, Efrida Wati Harahap, Bestari Endayana, "Dampak Poligami Terhadap Perkembangan Anak," *Jurnal Literasiologi* 11, no. 1 (2024): 115-23, <https://doi.org/10.47783/literasiologi.v11i1.662>.

<sup>56</sup> Wahyu Fitrianoor, "Hukum Perkawinan Muslim di Brunei Darussalam (Studi Analisis Maslahat At-Tufi)," n.d.

status for wives and children, particularly for those who are not registered. The challenge lies in the implementation regarding the granting of permits and the enforcement of sanctions, especially in Indonesia.

This study is significant not only in the circumstance of Islamic law and polygamy regulations in Southeast Asian Muslim countries but also holds global relevance in the debates surrounding legal pluralism, women's rights, and the implementation of Islamic law in modern legal systems. With an approach rooted in legal pluralism and the Quran, this study can bridge the gap between Islamic legal understandings and international legal standards, providing insights into legal policies in Muslim countries and the world.

The legal effect of polygamy on the rights of women and children in Southeast Asian Muslim countries is highly dependent on the implementation of regulations and social awareness. Although there is a legal framework designed to protect women, real-world practice often reveals injustices. Therefore, legal revisions that provide explicit protection for wives and children are necessary. Furthermore, education and growing societal consciousness about the rights of women and children need to be done on a large scale to create a more just environment for all parties involved in the institution of marriage.

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