

A Comparative Study on Polygamy Permit in Islamic Marriage Law: The Case of Indonesia and Brunei Darussalam

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Abstract: Polygamy is a sensitive issue in Islamic marriage law, which is regulated differently in each Muslim country. Indonesia and Brunei Darussalam both adhere to Islamic law, but have different legal approaches to granting permission for polygamy. This study explores the legal provisions regarding permission for polygamy in Islamic marriage regulations. It also discusses the similarities and differences in the procedures for granting permission for polygamy between Indonesia and Brunei Darussalam. This study is a comparative normative legal study that utilizes the statute approach and comparative approach. The results of the study show that Indonesia and Brunei Darussalam both require permission for polygamy based on the principles of fairness and the husband's financial ability, but differ in their procedures and penalties. In Indonesia, permission must be obtained through the Religious Court with the consent of the first wife, while in Brunei, permission is granted by a judge with a penalty of a \$2,000 fine for those who marry without written permission. This difference reflects Indonesia's more flexible legal system compared to Brunei, which enforces Islamic law more strictly.

Kata Kunci:
 Komparatif,
 Poligami, Hukum
 Perkawinan Islam

Abstrak: Poligami merupakan isu sensitif dalam hukum perkawinan Islam yang diatur secara berbeda di setiap negara muslim. Indonesia dan Brunei Darussalam sama-sama menganut hukum Islam, namun memiliki pendekatan legal yang berbeda dalam pemberian izin poligami. Penelitian ini menggali bagaimana ketentuan hukum tentang izin poligami dalam peraturan perkawinan Islam, penelitian juga membahas tentang apa persamaan dan perbedaan prosedur izin poligami antara Indonesia dan Brunei Darussalam. Penelitian ini merupakan studi hukum normatif komparatif yang memanfaatkan pendekatan *statute approach* dan *comparative approach*. Adapun hasil dari penelitian menunjukkan bahwa Indonesia dan Brunei Darussalam sama-sama mensyaratkan izin poligami dengan prinsip keadilan dan kemampuan finansial suami, tetapi berbeda dalam prosedur dan sanksinya. Di Indonesia, izin harus melalui Pengadilan Agama dengan persetujuan istri pertama, sementara di Brunei izin diberikan oleh Hakim dengan sanksi denda \$2000 bagi yang menikah tanpa izin tertulis. Perbedaan ini mencerminkan sistem hukum Indonesia yang lebih fleksibel dibanding Brunei yang menerapkan hukum Islam lebih ketat.

INTRODUCTION

Marriage in Islam is a sacred contract and is worth worship, where its implementation must fulfill the specified conditions and pillars.¹ A marriage contract between a guardian and a prospective groom has legal consequences, namely the transfer of responsibility for the woman from her guardian to her husband. Before the contract, the man has no obligations towards his future wife, but after the contract, he is fully responsible for her maintenance, protection and welfare.² Therefore, marriage must be carried out by fulfilling all legal regulations so that it can become an act of worship that brings blessings and happiness in domestic life.

Monogamy is the principle of marriage in Islam, where the provisions of marriage require that each party, husband or wife is only allowed to be tied to one partner.³ However, Allah SWT makes allowances for husbands to have more than one wife as long as they are able to be fair,⁴ as stated in Surah An-Nisa' verse 3. But when a husband feels unable to be fair, then he is prohibited from polygamy in order to maintain justice and family welfare. This verse is not an order to practice polygamy,

¹ UU RI No. 1 Th. 1974 Tentang Perkawinan dan Kompilasi Hukum Islam (Bandung: Citra Umbara, 2011), hlm. 228.

² Mustafid and Risvan Akhir Roswandi, "Crime in Marriage: The Practice of Polygamy in the Puncak Sorik Merapi Community, Mandailing Natal," *Al-Qadha: Journal of Islamic Law and Legislation* 10, no. 1 (June 14, 2023): pp. 95., <https://doi.org/10.32505/qadha.v10i1.5950>.

³ UU RI No. 1 Th. 1974 Tentang Perkawinan dan Kompilasi Hukum Islam (Bandung: Citra Umbara, 2011), hlm. 229.

⁴ Abdul Rahman Ghazali, *Fiqh Munakahat* (Jakarta: Kencana, 2010), p. 129.

but rather a signpost for those who want to practice it in order to stick to the principles of justice and responsibility in the household.

The principle of monogamy is used as the main basis for marriage according to the 1974 Marriage Law, but not in the form of closed monogamy, but open.⁵ This can be seen in several articles, such as Article 3 paragraph (2), Article 4 paragraphs (1) and (2), and Article 5 paragraphs (1) and (2), which allow for exceptions to the principle of monogamy, namely polygamy, under certain conditions. Similar provisions are also regulated in KHI Chapter IX Articles 55-59. Although polygamy is legally permitted under strict conditions, its practice still causes debate in society, with views both in favor and against it.⁶ Those who reject or disagree with polygamy argue that the practice can have significant negative impacts on the family and often harms and hurts women.⁷

Ismail Marzuki argues in his research that today's scholars show the dynamics of evolving thoughts and increasing awareness of gender equality, polygamy is increasingly being rejected. Polygamy is considered inconsistent with the principle of equal rights between men and women and has the potential to cause negative impacts, especially for women and children. In addition, the practice of polygamy is considered to make it difficult to achieve a harmonious, prosperous and happy married life.⁸

Regulations on polygamy in various Muslim countries differ in their application, including in Indonesia and Brunei Darussalam. In Indonesia, the practice of polygamy is strictly regulated, requiring husbands to obtain the wife's blessing and permission from the Religious Court for valid reasons, as stated in Law No. 1 Year 1974 and KHI. Meanwhile, Brunei Darussalam, which applies a more dominant Islamic legal system, has more flexible rules in granting polygamy permits through Judges in the Syariah Court.⁹

To see the novelty in this article, the author will try to display several articles that have the same theme, such as the study by Sulihkhodin et al.,¹⁰ next study of

⁵ Esther Masri, "Poligami Dalam Perspektif Undang-Undang Nomor I Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (KHI)," *KRTHA BHAYANGKARA* 13, no. 2 (26 Desember 2019): hlm. 225., <https://doi.org/10.31599/krtha.v13i2.7>.

⁶ Masri, p. 234.

⁷ Raka Haikal Anfasya dan Natasya Yunita Sugiastuti, "Perbandingan Hukum Ketentuan Perkawinan Poligami Di Indonesia Dan Mesir," *Reformasi Hukum Trisakti* 5, no. 2 (1 April 2023): hlm. 341., <https://doi.org/10.25105/refor.v5i2.15839>.

⁸ Ismail Marzuki, "Politik Hukum Poligami (Studi terhadap Peraturan Perundang-Undangan di Negara-Negara Muslim)," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (25 Juni 2019): hlm. 142., <https://doi.org/10.24090/mnh.v13i1.1799>.

⁹ Irwan Ramadhani, "Ragam Regulasi Poligami di Negara Muslim Modern: Komparasi Hukum Keluarga di Asia Tenggara dan Afrika Utara," *Jurnal Antologi Hukum* 3, no. 1 (30 Juli 2023): hlm. 30., <https://doi.org/10.21154/antologihukum.v3i1.2313>.

¹⁰ Moh Alfin Sulihkhodin, Muhammad Aji Purwanto, dan Nova Fransisca, "Kebijakan Poligami di Indonesia dan Brunei Darussalam dalam Perspektif Hukum Perdata Internasional," *Bertuah (Jurnal Syariah dan Ekonomi Islam)* 4, no. 2 (2023): hlm. 119., <https://doi.org/10.56633/jsie.v4i2.597>.

Abdul Muhaimin bin Muhd Aznor et al.,¹¹ and the study of Rif'atur Rohmah and Miftahul Huda.¹²

Sulihkhodin et al.'s study discusses polygamy within the framework of international civil law, with an emphasis on legal conflicts between countries. Abdul Muhaimin et al.'s article examines the legal position of polygamy in four countries at once (Malaysia, Indonesia, Brunei, and Egypt), so it is broad but lacks depth on a country-by-country basis. Meanwhile, the studies of Ulin Nadya Rif'atur Rohmah and Miftahul Huda discuss the provisions of family law in general in Indonesia and Brunei, not specifically on the aspect of polygamy permits. Unlike the three, the author's article specifically highlights the comparison of polygamy permits in the perspective of Islamic marriage law between Indonesia and Brunei Darussalam in a more in-depth and focused manner.

Although polygamy is legally allowed in both countries, its practice is still debated in society. Some parties support polygamy as part of the legitimate teachings of Islam, while some parties reject polygamy because it is considered to have the potential to cause injustice in households, especially against women and children. Based on this, this study aims to examine the differences in the rules of polygamy permits in the Islamic marriage law systems in Indonesia and Brunei Darussalam, and their impact on justice in Muslim families. Through this study, a more comprehensive understanding of how each country regulates the practice of polygamy within the framework of Islamic Family Law is expected.

RESEARCH METHODS

This research is a normative-comparative legal study that aims to compare the provisions of polygamy permits in Islamic marriage law in Indonesia and Brunei Darussalam. To examine this, a *statute* approach and *comparative* approach are used to find out the points of similarity and difference in the legal provisions applicable in each country. The data source used is secondary data consisting of primary legal materials in the form of Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), Government Regulation Number 9 of 1975, and the Family Law Law of Brunei Darussalam in 1999. Meanwhile, secondary legal materials come from various literatures such as books, scientific articles, and previous research results related to this research. For tertiary legal materials, the author uses dictionaries and encyclopedias that explain the meaning of terms in this research.

¹¹ Hendun Abd Rahman Shah et al., "A Comparative Study Of Legal Position Of Polygamy Under Islamic Family Law In Malaysia, Indonesia, Brunei And Egypt," *International Conference on Sharia, Law and Science (CFORSJ i-CONF)* 2, no. 1 (2024): pp. 291.

¹² Ulin Nadya Rif'atur Rohmah dan Miftahul Huda, "Ketentuan Hukum Keluarga Di Brunei Darussalam Dan Indonesia," *JURNAL PIKIR: Jurnal Studi Pendidikan dan Hukum Islam* 6, no. 1 (2020): hlm. 1.

RESULTS AND DISCUSSION

Marriage Laws of Indonesia and Brunei Darussalam

The history of marriage law in Indonesia has experienced gradual development which is divided into several important periods. During the Dutch colonial period, Islamic law was used as the basis for resolving family cases for the indigenous people through books such as *Compendium Freijer* and *Tjicebonshe Rechtsboek*, although in practice there were restrictions on the authority of religious courts by the colonial government. This was further emphasized through the *Staatsblaad* and the *Receptie* theory which required that Islamic law only apply if it did not conflict with customary law and Dutch East Indies regulations. The Japanese colonial period did not bring significant changes, as Islamic law policy continued with a change in the term court in the Japanese military government structure.

After independence, Indonesia began to develop a more structured national marriage law system. The Indonesian government issued Law No. 22/1946 on the registration of marriage, divorce and reconciliation as the first step in the establishment of a national marriage law system. An important milestone occurred with the birth of Law No. 1/1974 on Marriage which aimed to unify the various marriage law systems prevailing in society. Then, this legal unification was strengthened through the Compilation of Islamic Law in 1991 which specifically regulates family law for Muslims, as well as being an important reference in the practice of religious courts to date.¹³

While in Brunei Darussalam in the early 16th century, the Sultanate of Brunei was a major power in Southeast Asia with a vast territory covering Borneo and parts of the Sulu Archipelago and the Philippines, but its power began to shrink in the 17th to 19th centuries due to concessions to foreign powers such as the Dutch, British, and the British North Borneo Company, as well as attacks by pirates. The British presence had a major influence, including on the legal system, particularly Islamic family law. Before the arrival of the British, Brunei already had an Islamic legal system that was standardized in the Brunei Kanun Law during the time of Sultan Hasan and perfected by Sultan Jalilul Jabbar. However, since the treaty with the British in the mid-19th century, the British began to interfere in Brunei's judicial affairs, slowly intervening the power of the Sultanate Court and influencing the structure of the legal system until independence.

In 1888, Brunei signed a treaty with the United Kingdom that gave full authority to British royal judges to handle legal cases, especially those involving British citizens, people of British colonies, as well as other foreign nationals with the consent of their home country. In cases involving Bruneians, if they are the plaintiff or defendant, the case will be heard by British judges. However, if the people of Brunei are the party being sued, then the case will be settled in the Local Court. This agreement markedly

¹³ Kartika Septiani Amiri, "Perkembangan Dan Problematika Hukum Perkawinan Di Indonesia," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (24 November 2021): hlm. 57., <https://doi.org/10.30984/jifl.v1i1.1639>.

reduced the authority of the Brunei Sultanate Court and triggered major changes in the legal structure, including restrictions on the scope of Islamic law.

As a result of this colonial intervention, the application of Islamic law in Brunei began to be restricted, especially in the realm of civil law. This was marked by the issuance of the *Muhammadan's Law Enactment* of 1911 which only regulates aspects of worship, marriage, and divorce for Muslims, as well as the *Muhammadan's Marriage and Divorce Enactment* of 1913 which regulates marriage and divorce registration. In 1955, Brunei began to codify Islamic law more systematically through the *Majelis Ugama Islam*, *Adat Negeri*, and *Mahkamah Qadi Acts*, which were later revised several times until the *Majelis Ugama and Mahkamah Qadi Act 77* in 1984. However, the scope of Islamic family law remained limited to marriage, divorce and maintenance. This restriction shows that British colonialism markedly reduced the role of Islamic law in Brunei's national legal system, a pattern also experienced by Indonesia under Dutch colonialism.¹⁴

The legal provisions governing the issue of Islamic family law in Brunei Darussalam have undergone several changes and improvements. Currently, these provisions are officially outlined in the form of Islamic law reform contained in the *Laws of Brunei Chapter 217 Islamic Family Law Revised Edition 2012*.

Broadly speaking, this regulation covers all important aspects of Islamic family law, such as rules on marriage, marriage registration, divorce, child custody, dowry, maintenance, mechanisms for resolving marital disputes through hakam, as well as provisions on polygamy. All these aspects are designed to create a comprehensive family law system that complies with the principles of Islamic law in Brunei.¹⁵

Principles of Marriage Law in Indonesia and Brunei Darussalam

The principles of marriage law in Indonesia and Brunei Darussalam have similarities in Islamic normative foundations, but both have different approaches in their positive legal systems. In Indonesia, the principles of marriage law are regulated in Law Number 1 of 1974 concerning Marriage and strengthened through the Compilation of Islamic Law (KHI). Some important principles in Indonesian marriage law in Law Number 1 of 1974 are:

In the Indonesian marriage law system, there are several important principles that form the basis for organizing and regulating family relationships. First, the *principle of monogamy* as stipulated in Article 3 of Law Number 1 Year 1974, states that a man may only have one wife and a woman may only have one husband, so that the relationship between husband and wife is based on the principle of loyalty to one another. Secondly, the *consensual principle* in Article 6 of the same law confirms that the validity of a marriage or the appointment of a guardian must be based on the free

¹⁴ A Intan Cahyani, "Hukum Keluarga Islam Di Brunei Darussalam," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 2, no. 2 (2015): hlm. 153., <https://doi.org/10.24252/al-qadau.v2i2.2638>.

¹⁵ Sulihkhodin, Purwanto, dan Fransisca, "Kebijakan Poligami di Indonesia dan Brunei Darussalam dalam Perspektif Hukum Perdata Internasional," hlm. 127.

consent of the prospective bride and groom or the families concerned. This shows the importance of awareness and willingness in forming a marriage bond.

In addition, there is also the *principle of proportion* as stated in Article 31, which states that the rights and position of husband and wife are balanced both in the household and in social life. This principle aims to create harmony and justice in family relations. Finally, there is also the *principle of indivisibility* in guardianship, which means that there is only one guardian for a minor, in accordance with Article 331 of the Civil Code. However, there are exceptions, for example if the guardian (mother) remarries, then her new husband can act as joint guardian, or if there is a need for guardianship abroad, a special executor can be appointed under the provisions of Article 361 of the Civil Code.

In the Compilation of Islamic Law (KHI), several main principles are used as the basis for regulating marriage law. The first is the *principle of freedom and willingness*, as stated in Article 16 KHI, which emphasizes that marriage must be based on the consent of the bride and groom. This consent can be expressed directly through speech, writing, or gesture, and can even be expressed in the form of silence as long as there is no explicit rejection. In addition, the *principle of protection and prevention* is also regulated in Article 5, which requires the official recording of every marriage in order to ensure public order, with the authority to record being vested in the Marriage Registration Officer in accordance with Law Number 22 of 1946 in conjunction with Law Number 32 of 1954.

Furthermore, the *principle of obligation and responsibility* is emphasized in Articles 80-84 and Articles 98-106 KHI. The husband is obliged to guide, protect, and fulfill the needs of his wife and children, including education and health, according to his ability. Both also bear the responsibility to create a household that is *sakinah, mawaddah, and rahmah*. In terms of polygamy, although it is allowed, KHI applies the *principles of justice and legal certainty* strictly with severe conditions such as the need to be fair and obtain court permission with the consent of previous wives. This reflects that KHI in principle still upholds the *principle of monogamy* in the practice of Islamic family law in Indonesia.¹⁶

The principles of marriage in Islamic family law in Brunei Darussalam as stipulated in *Laws of Brunei Chapter 217: Islamic Family Law (Revised Edition 2012)* reflect sharia principles that emphasize justice, responsibility, and validity in the marriage bond. Some of the principles that can be identified include:

First; The Principle of Willingness and Consent. Marriage is only valid if there is free consent from the prospective bride and groom (see Article 13). This emphasizes the importance of free will without coercion. The purpose of this provision is to ensure that marriages take place in accordance with the principles of sharia and maintain order in society.

¹⁶ Muhammad Tsaqib Idary, "Asas-Asas Hukum Keluarga Islam," *JURNAL HUKUM PELITA* 4, no. 2 (28 November 2023): hlm. 177., <https://doi.org/10.37366/jh.v4i2.3105>.

Secondly, the *principle of marriage registration*, in Brunei Darussalam, marriage registration is mandatory, even if the marriage has been solemnized through a marriage contract. Through this registration process, the Registrar is tasked with verifying whether or not all the necessary legal requirements of marriage have been met.¹⁷ All marriages must be officially registered to ensure legal validity and protection of the spouses' rights.

Third; The *Principle of Monogamy Conditional on Polygamy*, (Articles 23-25) in Brunei Darussalam emphasizes that the ideal and basic form of marriage is monogamy. However, in certain situations, Islamic law still opens the opportunity for husbands to be polygamous, with very strict conditions. These conditions include the ability to be fair to all his wives and children, as well as obtaining approval from the sharia court and permission from his existing wife. These provisions are intended to prevent the practice of polygamy from being abused and remain within the framework of justice and legal responsibility.¹⁸

The Concept of Polygamy in Islamic Law

Islam teaches a balance in meeting the needs of each individual in the family without neglecting their respective rights and obligations. As equal beings, husbands and wives are each given equal rights and obligations in domestic life. Islam is a religion that is in accordance with human nature does not impose demands that exceed the capacity of its adherents. The principle of law in Islam also does not favor certain groups, on the contrary, Islam is present precisely for the mercy of all nature, serving as a guide to life towards true happiness. Similarly, in terms of the permissibility of polygamy, Islam does not make it a form of privilege or favoritism towards men or discrimination against women, but rather as a solution in dealing with various social problems in family life, while still considering the benefits and wisdom contained in it.¹⁹

Polygamy is a term of Greek origin, a combination of the words "*polus*" meaning "many" and "*gamein*" meaning "to marry". The term refers to a situation in which an individual lives a domestic life with more than one woman as his wife at the same time. In Arabic, the term polygamy is *ta'dīd al-zawjāt*, which means having more than one wife. In Indonesian, the term polygamy is often referred to as "adultery."²⁰

In terminology, polygamy is a form of marriage in which a man has more than one wife at the same time. This tradition was known long before the advent of Islam, especially among the Arab community during the *jahiliyah* period. At that time, there

¹⁷ Seilla Nur Amalia Firdaus, Siah Khosyiah, dan Murni Rosyani, "Pembaharuan Hukum Keluarga Islam: Studi Perbandingan Hukum Keluarga di Brunei Darussalam dan Malaysia," *Zaaken: Journal of Civil and Business Law* 5, no. 2 (23 Juni 2024): hlm. 196., <https://doi.org/10.22437/zaaken.v5i2.35264>.

¹⁸ Rohmah dan Huda, "Ketentuan Hukum Keluarga Di Brunei Darussalam Dan Indonesia," hlm. 9.

¹⁹ Suud Sarim Karimullah, "Pembaruan Islam Bidang Keluarga dan Relevansinya dengan Peraturan Poligami di Indonesia," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 2, no. 2 (30 Desember 2021): hlm. 69., <https://doi.org/10.24042/el-izdiwaj.v2i2.10862>.

²⁰ Rahmat Hakim, *Hukum Perkawinan Islam* (Bandung: Pustaka Setia, 2000), hlm 113.

were no rules limiting the number of wives, so a man could have as many wives as he wanted without clear provisions.²¹

During the Arabian *jahiliyah* period, having multiple wives was considered normal and common in society. However, over time, polygamy has come to be seen as unusual or even inappropriate in accordance with social norms. One of the reasons behind this is the concern about gender injustice and inequality, especially for women in polygamous marriages.²²

In principle, Islam establishes marriage in the form of monogamy, as can be understood from Allah's words in Surah An-Nisa' verse 3, confirming that Islam allows polygamy with a maximum limit of four wives, however, the main condition that must be met, namely the obligation to be fair to the wives, both in terms of fulfilling physical needs such as services, nafkah, shelter, clothing, as well as in sharing time equally. Justice here emphasizes balance in fulfilling the rights of wives and children proportionally. However, if a husband feels unable to be fair, then it is advisable for him to marry only one woman, in line with the principle of monogamy adopted in Islam.²³

Abdurrahman Al-Jaziri distinguishes the meaning of justice in QS. An-Nisa verses 3 and 129. According to him, justice in verse 3 refers to aspects that can be realized in real terms by the husband, such as the distribution of alimony, the turn to stay overnight, and equal material provision to his wives. On the other hand, justice in verse 129 is meaningless and relates to inner feelings, such as inclination and affection, which are difficult or even impossible for humans to fully control.²⁴

In line with Al-Jaziri's opinion, Quraish Shihab also argues that the justice referred to in QS. An-Nisa verse 129 refers to a form of justice that is impossible for a husband to fully realize, especially in terms of feelings and inclinations. Therefore, to reduce the potential for injustice in polygamy, a husband is encouraged to control his lust and not show excessive treatment to the wife he loves more, so as not to cause injustice to other wives.²⁵

Unlike Al-Jaziri and Quraish Shihab, Fazrul Rahman argues that justice in QS. An-Nisa verses 3 and 129 cannot be separated, because they are interrelated. According to him, justice is not only limited to the material aspect as mentioned in verse 3, but also includes inner justice as explained in verse 129. This shows that Allah affirms justice as a whole in polygamy. In line with this view, Siti Musdah Mulia also emphasizes that justice in both material and immaterial aspects must be fulfilled as a condition of polygamy. In fact, she argues that if viewed from the cause of the

²¹ Al Thohir Al Hadad, *Wanita Dalam Syariat dan Masyarakat* (Jakarta: Pustaka Firdaus, 1993), hlm. 6.

²² Mustafid Mustafid, "Konseptualisasi HAM Dalam Poligami," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 2, no. 2 (26 Desember 2021): hlm. 4., <https://doi.org/10.24042/el-izdiwaj.v2i2.10755>.

²³ Fatimah Zuhrah, "Problematika Hukum Poligami Di Indonesia (Analisis Terhadap Uu No. 1 Tahun 1974 Dan KHI)," *AL-USRAH: Jurnal al-Ahwal al-Syakhsyah* 5, no. 1 (2017): hlm. 29., <http://dx.doi.org/10.30821/al-usrah.v5i1.1342>.

²⁴ Abdurrahman al-Jaziri, *al-Fiqh 'ala al-Mazahib al-Arab'a, Juz IV* (Beirut: Dar al-Fikr, tt), hlm. 240.

²⁵ M Quraish Shihab, *Membumikan Al-Qur'an* (Bandung: Mizan, 1998), hlm. 201.

revelation of the verse that is often used as the basis for polygamy, it is actually more related to the protection of orphans, not about marriage.²⁶ In my opinion, the difference in opinion is influenced by the different understanding of Surah Annisa verse 3 and verse 126.

Regarding the permissibility of polygamy, Ibn Rushd, states that there is a consensus among Muslims that allows a man to have more than one wife. However, Islam sets a maximum allowable limit, which is up to four wives.²⁷ Permissibility in this context refers to the meaning of *jawaz* or *ibahah* (mubah), which means something that is permitted but not obligatory or recommended. In *ushul fiqh* principles, *mubah* is part of one of the five categories of *taklifi* law, along with *wajib*, *sunnah*, *makruh*, and *haram*.²⁸

Most scholars agree that Islam stipulates that the number of wives in the practice of polygamy should not exceed four, and marrying more than that, such as five or more wives, is not allowed. However, there is a small group of scholars who argue that polygamy can be practiced with up to nine wives. This opinion is based on their interpretation of the Qur'anic verse that uses the conjunction *waw* (و) which they understand as a word that indicates addition, resulting in a limit of up to nine wives.²⁹

According to M. Quraish Shihab, polygamy in Islam is not an order, but a benefit solution that is allowed under certain conditions for the sake of family survival. Some of the reasons that can be considered for the permissibility of polygamy include the wife's inability to carry out household obligations due to prolonged illness, inability to provide offspring, imbalance in the number of men and women in society, the husband's high biological drive, and social factors such as protection of widows who need maintenance. However, he emphasized that the practice of polygamy must be carried out with a sense of responsibility, uphold the principles of justice, and follow the provisions of Islamic law, as stated in Surah An-Nisa verse 3, which emphasizes that if a husband is worried that he cannot be fair, therefore, it is more advisable for him to have only one wife. Therefore, polygamy is the last resort allowed in an emergency, not the main choice in marriage.³⁰

Polygamy License in Marriage Law in Indonesia and Brunei Darussalam

The controversy surrounding polygamy continues to this day, mainly due to the perceived degradation of women. This issue is also closely related to gender issues, where the bond between a man and a woman is often seen as politically charged and

²⁶ Mughni Labib Ilhamuddin Is Ashidique, "Poligami Dalam Tinjauan Syariat Dan Realitas," *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan* 2, no. 2 (2021): hlm. 205., <https://doi.org/10.15575/as.v2i2.14332>.

²⁷ Ibn Rushd, *Bidayatul Mujtahid* (Jakarta: Pustaka Azzam, 2007), p.31.

²⁸ Abdul Wahab Khallaf, *Ilmu Ushul Fiqh* (Cairo: Dar al-Qalam, 1978), pp. 105.

²⁹ Fahimul Fuad, "Historisitas Dan Tujuan Poligami: Perspektif Indonesia Dan Negara Muslim Modern," *Al-Syakhsiyyah: Journal of Law & Family Studies* 2, no. 1 (12 Juni 2020): hlm. 77., <https://doi.org/10.21154/syakhsiyyah.v2i1.2161>.

³⁰ M Quraish Shihab, *Perempuan: Dari Cinta Sampai Seks, Dari Nikah Mut'ah Sampai Nikah Sunnah, Dari Bias Lama Sampai Bias Baru*, (Tangerang: Lentera Hati, 2018), hlm. 168.

of particular interest.³¹ As a result, the legitimacy of polygamy in domestic life continues to be debated. One aspect that is often questioned is whether justice is an absolute requirement in the rules of polygamy or whether *istithā'ah* (ability) is sufficient as a basis to facilitate the practice.³²

In Indonesia, the rules regarding the practice of polygamy are contained in Law Number 1 of 1974 concerning Marriage, the implementation of which is further explained in Government Regulation of the Republic of Indonesia No. 9 of 1975. Especially for the State Civil Apparatus (ASN), the provisions regarding polygamy permits are specifically regulated in Government Regulation No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, as well as in KHI.

Marriage Law No. 1/1974 and its derivative regulations are generally in line with the basic principles in Islamic Law. This regulation emphasizes the principle of monogamy, which is a relationship between one husband and one wife. However, in certain situations and with legally acceptable reasons, a husband is allowed to be polygamous as long as he fulfills the conditions set out in the applicable legal provisions.³³

The regulations regarding polygamy, including licensing, requirements, and procedures, are fully set out in Articles 3, 4, and 5 of Law No. 1/1974 on Marriage. Article 3 (1) emphasizes that the main rule in marriage is monogamy, where a man is only allowed to marry one woman, and vice versa. However, paragraph 2 opens up the possibility of polygamy on the condition that the Court can grant permission, if an application is submitted from the relevant party and remains guided by the provisions stipulated by law.

The conditions for polygamy are stipulated in Articles 4 and 5 of Law No. 1/1974, which stipulate that husbands who wish to marry more than one must have strong and fundamental reasons. These reasons must show that polygamy is carried out in order to overcome conditions that have the potential to disrupt household harmony. In accordance with Article 4, provisions regarding the practice of polygamy, including aspects of licensing, conditions, and procedures, are regulated in detail in Articles 3, 4, and 5 of Law Number 1/1974 on Marriage. Article 3 paragraph 1 states that the basic principle in marriage is monogamy, where a man can only have one wife, and vice versa. However, paragraph 2 states that under certain conditions, the Court may grant permission for polygamy if there is a request from an interested party and the request meets the applicable legal provisions.³⁴ Thus, polygamy in Indonesian law is not an absolute right, but must go through strict legal considerations.

³¹ Alean Al-Krenawi, *Psychosocial Impact of Polygamy in the Middle East*, (Berlin, Germany: Springer Science & Business Media, 2013), pp. 2.

³² Anwar Hafidzi, "Prasyarat Poligami Dalam Kitab Fiqih Islam Dan Kompilasi Hukum Islam Perspektif Mashlahah Mursalah," *Al-Daulah: Jurnal Hukum dan Perundangan Islam* 7, no. 2 (2017): hlm. 368., <https://doi.org/10.15642/ad.2017.7.2.366-392>.

³³ Zuhrah, "Problematisa Hukum Poligami Di Indonesia (Analisis Terhadap Uu No. 1 Tahun 1974 Dan KHI)," hlm. 31.

³⁴ UU RI No. 1 Th. 1974 Tentang Perkawinan dan Kompilasi Hukum Islam, 2011.

The conditions for polygamy as stated in Articles 4 and 5 of Law Number 1 Year 1974 state that a husband who intends to marry more than once must have strong and rational reasons to maintain family integrity. For this reason, a husband must submit an official request to the authorized Court in the area where he is domiciled. Such permission will only be granted if there are legally justified grounds, such as the wife being unable to carry out her roles and responsibilities, experiencing health problems or permanent disability, or being unable to give birth to offspring,³⁵ Or in the event that the wife does not inform or her whereabouts are unknown for a period of at least two years. In addition, there are other reasons that judges can consider based on certain conditions.³⁶

Based on the provisions of Government Regulation No. 9 of 1975, especially Article 41 letter b, the consent of the wife or wives in a polygamy case can be submitted either in writing or orally. However, even if the consent has been given in writing, oral ratification is still required in a hearing at the Religious Court. Furthermore, as stipulated in Article 42, the examination process by the court must involve the direct presence and hearing of the wife concerned. This examination must be conducted by a judge within thirty days of the application and supporting documents being received by the court.³⁷

In certain circumstances where the wife or wives cannot be asked for consent or cannot be involved in the agreement, Article 5 paragraph (2) of Law Number 1 Year 1974 provides an exception to the obligation to obtain such consent. This exception applies if the wife cannot be asked for consent for certain reasons, for example if her whereabouts are unknown for at least two years or there are other circumstances assessed by the judge as legitimate reasons. This provision confirms that although the wife's permission is a crucial prerequisite that must be fulfilled by the husband before practicing polygamy, exceptions are still possible in certain legally considered situations.

If the court considers that the applicant has a strong motive to have more than one wife, a court decision will be issued approving the application for polygamy, as stated in Article 43 of Government Regulation No. 9 of 1975. However, if the permit is not approved and the court decision has permanent legal force, then in accordance with Article 44 of PP Number 9 of 1975, the registration officer is not allowed to register the polygamous marriage. Thus, without formal approval from the judiciary, marriages with more than one spouse cannot be legally recorded according to applicable legal provisions, confirming that the regulation of polygamy in Indonesia must go through strict procedures.

The legal provisions regarding the implementation of polygamy that have been explained previously are binding for all parties, both for the husband who wants to

³⁵ M. Taufan B, *Sosiologi Hukum Islam: Kajian Empirik Komunitas Sempalan*, (Yogyakarta: Deepublish, 2016), hlm. 63.

³⁶ UU RI No. 1 Th. 1974 Tentang Perkawinan dan Kompilasi Hukum Islam, 2011.

³⁷ Peraturan Pemerintah Nomor 9 Tahun 1975

practice polygamy and the Marriage Registration Officer. If a person does not comply with the rules set out in the legislation, for example, practicing polygamy without obtaining approval from the court or registering a polygamous marriage without legal requirements, then criminal sanctions will be imposed.

KHI was initially developed as a guide to Islamic law used in religious courts in Indonesia. Based on historical records, since February 18, 1985, through Circular Letter of the Head of the Bureau of Religious Courts of the Republic of Indonesia No. B/1/735, 13 fiqh books have been determined as sources of material law in the Religious Courts. Furthermore, to compile a more structured Islamic legal basis as a reference in the formation of regulations, a special team was formed based on the Joint Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Minister of Religious Affairs of the Republic of Indonesia No. 07/KMA/1985. This initiative was intended to form a more organized Islamic legal system to support the implementation of Law Number 1 of 1974 concerning Marriage.³⁸

According to Islamic law, polygamy has the legal status of *mubah*, which means it is permissible but not mandatory. This provision provides an alternative for a man to have more than one wife, with a maximum limit of four wives. In KHI, the rules regarding polygamy are explained in more detail in Chapter IX, which includes Articles 55 to 59. These provisions regulate the requirements, procedures, and limitations in the practice of polygamy in order to remain in line with the principles of justice in Islam and applicable regulations.³⁹

According to the Compilation of Islamic Law (KHI), there are several provisions related to polygamy rules that must be fulfilled by a husband. Article 55 of KHI states that at the same time, a man can have up to four wives, provided that he is able to uphold an impartial attitude in treating all wives and their offspring. However, if he is unable to guarantee such justice, then marrying more than one woman is not allowed for him.⁴⁰

Fiqh al-Islam wa Adillatuhu and KHI have similarities in terms of the main requirements for polygamy, which emphasize the husband's justice in treating his wives and his ability to provide for the family.⁴¹

Based on the provisions in Article 56 KHI, to be able to marry more than one wife, a husband is required to obtain approval from the Religious Court. The application for such permission must be submitted in accordance with the procedures listed in Chapter VIII of Government Regulation No. 9 of 1975. If a man continues to

³⁸ Asril Asril, "Eksistensi Kompilasi Hukum Islam Menurut Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Hukum Islam* 15, no. 1 (2015): hlm. 39., <https://doi.org/http://dx.doi.org/10.24014/hi.v15i1.1156>.

³⁹ Zuhrah, "Problematika Hukum Poligami Di Indonesia (Analisis Terhadap Uu No. 1 Tahun 1974 Dan KHI)," hlm. 34.

⁴⁰ Pasal 55 Kompilasi Hukum Islam (KHI).

⁴¹ Hafidzi, "Prasyarat Poligami Dalam Kitab Fiqih Islam Dan Kompilasi Hukum Islam Perspektif Mashlahah Mursalah," hlm. 381.

perform subsequent marriages without obtaining official approval from the judicial institution, then the marriage bond is declared invalid according to the law.⁴²

Based on Article 56 KHI, a husband who intends to have more than one wife is required to fulfill certain administrative requirements, namely obtaining prior approval from the Religious Court. This provision shows that the practice of polygamy cannot be done unilaterally, but must go through legal stages aimed at ensuring the validity of marriage and providing responsibility for the rights of wives and children.

Based on the provisions in Article 57 KHI, the Religious Court will only issue permission for husbands who want to polygamy if there are valid reasons and can be proven convincingly. Among the considerations that can be the basis for granting such permission include: first, the wife is unable to carry out her role and responsibilities as a spouse; second, the wife suffers from a physical disability or disease that cannot be cured; and third, the wife has a condition that causes the inability to have offspring.

Following the receipt of a formal request for a polygamy license, the Religious Court will conduct an examination in accordance with Article 57 KHI. This examination covers three main aspects: The first step is to evaluate whether there are justifiable grounds for the husband to remarry. The next step is to verify the existence of consent from the wife, either in writing or verbally, with the caveat that the oral statement must be made directly before the court. Finally, an assessment is made of the husband's economic capacity to ensure that the needs of his wife and children are met. To prove this ability, the husband must provide official documents, such as a certificate of income from the treasurer of the institution where he works, proof of income tax deduction, or other supporting documents that are recognized as valid by the court.⁴³

The polygamy process in KHI is further regulated in Article 58 paragraph (2), stipulating that in addition to fulfilling the main conditions in Article 55 paragraph (2), the husband must also comply with the provisions in Article 5 of Law No. 1 Year 1974. These provisions include the permission of the wife and the certainty that the husband is able to provide for all his wives and offspring. This consent can be given in writing or orally. However, even if it has been made in writing, it still requires confirmation in a trial at the Religious Court. However, in certain circumstances, the consent of the wife is not an absolute requirement. Conditions such as the wife's prolonged absence, inability to be the subject of the agreement, or being unable to be asked for consent, are exceptions to the wife's consent requirement. In these situations, the final decision rests with the Religious Court Judge, who will consider the grounds before granting permission for polygamy.⁴⁴

Based on Article 59 KHI, if a wife does not give permission for a polygamy plan, but the reasons submitted by the husband are in accordance with the provisions of Article 55 paragraph (2) and Article 57, the Religious Court is still authorized to grant

⁴² Pasal 56 Kompilasi Hukum Islam (KHI).

⁴³ Pasal 57 Kompilasi Hukum Islam (KHI).

⁴⁴ Pasal 58 Kompilasi Hukum Islam (KHI).

the application. Before issuing a decision, the court must hear the wife's statement during the trial. If permission is granted, both the husband and wife have the right to file an appeal or cassation to review the decision. This shows that the implementation of polygamy is not solely determined by the wife's consent, but also considers the overall juridical aspects of the Religious Court.⁴⁵

Overall, the polygamy license in Law No. 1/1974 and KHI shows that this practice cannot be done freely, but must go through strict legal procedures. Husbands who wish to practice polygamy must fulfill substantial requirements, including strong justification and the ability to carry out the principles of justice, as well as formal requirements, namely obtaining permission from the Religious Court. This step is taken to ensure that the rights of women and their offspring are fulfilled, as well as to ensure that polygamy is not carried out arbitrarily. With this regulation, Indonesian law tries to balance the values of justice in the household with the principles of Islamic Sharia and the protection of women.

Brunei Darussalam, as a Muslim-majority sultanate, implements a strong and integrated Islamic sharia-based family law, in contrast to Indonesia, which is pluralistic. Since 1911, Brunei has enacted the *Muhammadian's Law Enactment* to regulate marriage and divorce, which was later perfected through the *Marriage and Divorce Enactment* of 1913. This regulation has similarities with PP No. 9 of 1975 in Indonesia, but in the context of more dominant Islamic law.⁴⁶

As a further step of improvement, in 1955 Brunei Darussalam formulated the Islamic Religious Council, Qadhi Court, and Adat Negeri Law No. 20 with the main objective of unifying and simplifying the Islamic law in force at that time. In its development, this law underwent gradual revisions from 1957 to 1967 to refine and adapt the rules to more relevant needs. Further changes took place in 1984, where in addition to undergoing revisions in several sections, the law was also renamed the Ugama Council and Qadhi Court Act 77. One of the differences with the previous law was the more structured organization of family law, which included 29 articles.⁴⁷

In Brunei Darussalam's family law, the rules regarding polygamy are regulated in Article 23 of the 1999 Brunei Family Law Act, which states that a married man is not allowed to marry another woman unless he has obtained permission from a judge through an official procedure. The application must be submitted in both oral and written form, along with clear reasons for his desire to be polygamous. Some of the main requirements that must be met include financial capability, fairness in treating his wives and dependent family members, and the consent of the first wife. After considering all these aspects, the judge will decide whether or not the request can be granted.

⁴⁵ Pasal 59 Kompilasi Hukum Islam (KHI).

⁴⁶ Sulihkhodin, Purwanto, dan Fransisca, "Kebijakan Poligami di Indonesia dan Brunei Darussalam dalam Perspektif Hukum Perdata Internasional," hlm. 127.

⁴⁷ Cahyani, "Hukum Keluarga Islam Di Brunei Darussalam," hlm. 152.

In addition, Article 123 of the Brunei Family Law Act of 1999 emphasizes that if a man practices polygamy without obtaining written approval from a judge, he will be penalized with a fine of up to \$2000. This provision aims to ensure that the practice of polygamy is not carried out arbitrarily and remains in accordance with the principles of justice and the husband's responsibility towards his family. This regulation shows that while polygamy is allowed in Islamic law, it still requires strict legal mechanisms to avoid abuse and ensure the rights of wives and children are protected.⁴⁸

Comparison of Indonesia and Brunei Darussalam's Polygamy Permit

Polygamy is recognized as a permissible form of marriage in Islam, but its implementation is subject to strict legal regulations in each country. Both Indonesia and Brunei Darussalam, two countries with Muslim-majority populations, have established specific provisions regarding polygamy licensing procedures. While both emphasize the importance of justice and protection of family welfare, there are fundamental differences in the legal mechanisms implemented by each country.

In Indonesia, the practice of polygamy is regulated through Law No. 1/1974 on Marriage and KHI. Referring to the provisions of Article 4 paragraph (1) of the law, a man who wishes to remarry must first obtain approval from the Religious Court. This approval can only be given if the husband is able to show legally acceptable reasons. Conditions that can be taken into consideration include the wife's failure to carry out household functions, the presence of an incurable disease or disability, or infertility that prevents the possibility of having offspring.

In addition to the need to show legally justifiable reasons, a husband is also required to fulfill additional conditions as stipulated in Article 5 of the Marriage Law. These include the consent of the first wife or previous wives, sufficient financial capacity to meet the needs of all wives and their offspring, and the husband's commitment to be fair to all wives. If any of these requirements cannot be met, then the Religious Court has no legal basis to grant the request for permission to polygamy.

In Brunei Darussalam, the regulation on the practice of polygamy is contained in the 1999 Brunei Islamic Family Law Act. Under the provisions of Article 23, a married man is not allowed to enter into a subsequent marriage without first obtaining approval from a judge. An application for more than one wife must be submitted in writing and also submitted orally, accompanied by strong and acceptable reasons. In addition, the applicant is required to show proof of financial capability and the ability to be fair to all his wives and children.

One of the main differences between the polygamy rules in Indonesia and Brunei lies in the legal consequences for violators. In Indonesia, polygamous marriages conducted without permission from the Religious Court have no legal legitimacy, as mentioned in Article 56 paragraph (3) KHI. On the other hand, in Brunei Darussalam,

⁴⁸ Rohmah dan Huda, "Ketentuan Hukum Keluarga Di Brunei Darussalam Dan Indonesia," hlm. 9.

if a man marries more than one person without obtaining written approval from a judge first, then the act is considered a violation of the applicable legal provisions, he can be fined up to \$2000, as stated in Article 123 of the Brunei Family Law Act 1999.

In terms of procedures, the Indonesian legal system tends to be more complex and stringent than Brunei. In Indonesia, the first wife's consent is a mandatory requirement, except in certain circumstances such as the absence of news from the wife for at least two years. In contrast, in Brunei, the judge has full authority to assess whether or not the first wife's consent is still required in certain cases, such as when the wife cannot be consulted for certain reasons.

Moreover, in the Brunei legal system, the approach emphasizes the role of the judge in assessing the husband's eligibility for polygamy. The judge can make a thorough assessment based on the evidence presented, including the husband's financial and psychological condition as well as the welfare of the wife and children. Meanwhile, in Indonesia, the decision is mostly based on administrative requirements stipulated in the legislation.

Overall, although both countries regulate polygamy permits with similar principles, i.e. ensuring justice and family welfare, Indonesia places more emphasis on the wife's consent and administrative aspects, while Brunei gives greater authority to judges in considering each polygamy case. These differences reflect each country's legal approach in accommodating Islamic values in their national legal systems.

CONCLUSION

Based on a comparative study of polygamy permits in Islamic marriage law in Indonesia and Brunei Darussalam, it can be concluded that both are based on sharia principles, but differ in the application of the law. In Indonesia, polygamy is regulated in Law No. 1/1974 and the Compilation of Islamic Law (KHI), with the condition of permission from the Religious Court as well as the consent of the first wife, financial capability, and justice. Without fulfilling these procedures, polygamous marriages are considered legally invalid. Meanwhile, Brunei Darussalam through the Islamic Family Law Order 1999 also requires permission from a judge before polygamy is performed, with similar provisions. However, Brunei is stricter by imposing a fine of up to \$2000 for violators. This reflects a stricter legal approach that is centered on the state's religious authority. Therefore, Indonesia is advised to strengthen its supervision and sanctions against illegal polygamy to ensure justice, protection of women, and legal certainty in marriage practices.

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