

Injustice Legal System *Ibuism* in Indonesian Marriage Law: A Study on Polygamy for Childlessness Reasons

Deva Yulinda¹, Suci Ramadhani Putri², Hüseyin Elmhemit³

(^{1,2}Mataram State Islamic University, Faculty of İlahiyat Mustafa Kemal
University, email: devayulinda6695@uinmataram.ac.id,
suciramadhaniputri2911@gmail.com, huseyin.elmhemit@mku.edu.tr)

Abstract:

This research examines the inequality of justice for women in the regulation of polygamy in Indonesia, especially Article 4 paragraph (2) letter c of the Marriage Law and Article 57 letter c of the Compilation of Islamic Law which allows husbands to practice polygamy if the wife cannot produce offspring. This research uses a qualitative approach with a normative legal analysis method. The primary data sources of this research are the Marriage Law and the Compilation of Islamic Law. The secondary data sources are Court decisions, academic literature, journals, and expert opinions relevant to this research. The data analysis technique in this research uses the content analysis method. This research argues that there has been an inequality "Legal System *Ibuism*" in the polygamy permit policy of childlessness families in Indonesia. This research recommends legal reform in three aspects: legal structure (elimination of discriminatory policies by the executive, legislative and judiciary), legal substance (revision of polygamy rules in Article 4 paragraph 2 letter c of the Marriage Law and Article 57 letter c of the Compilation of Islamic Law), and legal culture (changing society's views on the role of women in marriage). As a solution, alternatives such as adoption, foster parents, and reproductive technology can be prioritised over polygamy. With these reforms, the legal system can be more just and inclusive for women.

Keywords:

Injustice, Legal System *Ibuism*, Polygamy, Childlessness

Abstrak:

Penelitian ini mengkaji ketimpangan keadilan bagi perempuan dalam regulasi poligami di Indonesia, khususnya Pasal 4 Ayat (2) Huruf c Undang-Undang Perkawinan dan Pasal 57 Huruf c

Kompilasi Hukum Islam yang mengizinkan suami berpoligami jika istri tidak dapat melahirkan keturunan. Penelitian ini menggunakan pendekatan kualitatif dengan metode analisis hukum normatif. Sumber data primer penelitian ini adalah Undang-Undang Perkawinan dan Kompilasi Hukum Islam. Adapun sumber data sekundernya berupa: Putusan Pengadilan, literatur akademik, jurnal, dan pendapat ahli yang relevan dengan penelitian ini. Teknik analisis data dalam penelitian ini menggunakan metode konten analysis. Penelitian ini berargumen bahwa telah terjadi ketidakadilan dalam “Ibuisme Sistem Hukum” pada kebijakan izin poligami keluarga childlessness di Indonesia. Penelitian ini merekomendasikan reformasi hukum dalam tiga aspek: struktur hukum (penghapusan kebijakan diskriminatif oleh eksekutif, legislatif dan yudikatif), substansi hukum (revisi aturan poligami dalam Pasal 4 Ayat 2 Huruf c Undang-Undang Perkawinan dan Pasal 57 Huruf c Kompilasi Hukum Islam), dan budaya hukum (merubah pandangan masyarakat terhadap peran perempuan dalam pernikahan). Sebagai solusi, alternatif seperti adopsi, orang tua asuh, dan teknologi reproduksi dapat diutamakan daripada poligami. Dengan reformasi ini, sistem hukum dapat lebih adil dan inklusif bagi perempuan.

Kata Kunci:

Ketidakadilan, *Ibuisme* Sistem Hukum, Poligami, Tanpa Keturunan

Introduction

The World Health Organisation's 2022 data indicates that approximately 17.5% of the global population, or one in six individuals, have experienced infertility.¹ Indonesian Islamic family law is regulated in Law Number 1 of 1974 concerning Marriage (Marriage Law), which was later updated to Law Number 16 of 2019 and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI). In its provisions, it is stipulated that a husband can request permission

¹ World Health Organization, “Infertility Prevalence Estimates, 1990–2021,” World Health Organization, April 3, 2023.

to remarry if he fulfils certain conditions. One of them is "the wife cannot give birth to offspring" (istri tidak dapat melahirkan keturunan) or childlessness. As stipulated in Article 4 paragraph (2) letter c of the Marriage Law and Article 57 letter c of the Compilation of Islamic Law.

The implementation of polygamy policies based on a wife's inability to produce offspring frequently results in the validation of husbands' decisions to take additional spouses, often without adequate regard for the rights and emotional well-being of the existing wife or consideration of alternative solutions, including adoption and assisted reproductive technologies that comply with Islamic principles.² This underscores the entrenched nature of patriarchal values within the Indonesian legal framework, which predominantly situates women within the domestic realm, assigning them roles centred on marriage and motherhood.

This research offers a gender-just approach to critique the Indonesian legal framework permitting polygamy, with a specific focus on childless families. The study's primary aim is to demonstrate the urgent need for reforming the polygamy permit system in Indonesia, informed by the principles of gender justice. Theoretically, the study is grounded in the Gender Justice framework, supplemented by Lawrence M. Friedman's Legal System theory, Julia Suryakusuma's concept of State Ibuism, and Betty Friedan's feminist theory. The Legal System theory is utilized to analyze the Indonesian legal system's structure, substance, and culture, which perpetuates polygamy permits on the basis of childlessness. The incorporation of Julia Suryakusuma and Betty Friedan's theoretical insights facilitates

² Andra Nugraha and Ali Akbar, "Analisis Pertimbangan Hakim Di Pengadilan Agama Mungkid Terkait Tidak Diterimanya Izin Poligami Yang Terpenuhinya Syarat Kumulatif (No.296/Pdt.G/2021/PA.Mkd)," *Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 6, no. 1 (April 23, 2025): 208-23, <https://doi.org/10.36701/bustanul.v6i1.2063>.

an examination of the legal system's discriminatory impact on women. By integrating these theoretical perspectives, this research seeks to provide a critical evaluation of polygamy policies and advocate for systemic legal reform.

This research is informed by several relevant studies that have investigated the complexities of Islamic family law and polygamy in Indonesia. The article by Salma Nurul Fadila examines the political dynamics of polygamy law in Indonesia, highlighting the tension between religious values and the demands of legal modernisation.³ The study by Nur Solikin and Moh. Wasik proposes a framework for constructing a just family based on *maqāṣid al-sharī'ah*, which prioritises equality and protection of family members and society.⁴ Additionally, the literature review by Ni Komang Kartika and I Gusti Ayu Diah Fridari explores the impact of involuntary childlessness on women and men in Indonesia, revealing significant differences in the experiences of men and women. These studies contribute to a deeper understanding of the intricacies of Islamic family law and polygamy in Indonesia.⁵

This research aligns with previous studies in its investigation of the dynamics of Islamic family law in Indonesia, specifically with regard to polygamy and its implications for childless families. However, this study's distinct contribution lies in its critical evaluation of the injustices embedded in Indonesia's

³ Salma Nurul Fadila et al., "Dinamika Politik Hukum Poligami Dalam Undang-Undang Perkawinan: Tantangan Dan Implikasinya Terhadap Sistem Hukum Indonesia," *Jurnal Ilmu Hukum* 1, no. 2 (n.d.): 3063-5403, <https://doi.org/10.31004/innovative.v4i1.8080>.

⁴ Nur Solikin and Moh Wasik, "The Construction Of Family Law In The Compilation Of Islamic Law In Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna* 27, no. 1 (June 12, 2023): 315-40, <https://doi.org/10.20414/ujs.v27i1.708>.

⁵ Ni Komang Kartika and I Gusti Ayu Diah Fridari, "Dampak Involuntary Childlessness Pada Perempuan Dan Laki-Laki Di Indonesia: Kajian Literatur," *Jurnal Ilmiah Ilmu Sosial* 10, no. 1 (June 26, 2024): 01-15, <https://doi.org/10.23887/jiis.v10i1.73369>.

polygamy permit policy, particularly as it affects childless families. The novelty of this research is further underscored by its application of a multifaceted theoretical framework, comprising Lawrence M. Friedman's Legal System theory, Julia Suryakusuma's State Ibuism theory, and Betty Friedan's Feminist theory, which collectively offer a fresh perspective on the topic of Islamic family law and polygamy.

Method

This research adopts a qualitative methodology, specifically employing a normative legal analysis approach⁶ to investigate the regulatory framework governing polygamy in Indonesia. The study's methodology is designed to provide a critical examination of the relevant legal norms and theoretical frameworks, with a particular focus on the Marriage Law and the Compilation of Islamic Law. The research is informed by a range of data sources, including primary sources such as legislation and court decisions, as well as secondary sources comprising academic literature, journals, and expert opinions. The content analysis method is utilized to analyze the data, facilitating a detailed understanding of the practical implementation of polygamy regulations and the development of theoretical critiques and policy recommendations.

Result and Discussion

Legal Structure: Elimination of Discriminatory Policies

The provision of polygamy in the Indonesian legal system is regulated by Law Number 1 of 1974 concerning Marriage, which was later updated to Law Number 16 of 2019, Government Regulation Number 10 of 1983 jo. Government Regulation Number 45 of 1990 on Marriage and Divorce Permits for Civil

⁶ Nanda Dwi Rizkia and Hardi Fardiansyah, *Metode Penelitian Hukum (Normatif Dan Empiris)*, ed. Elan Jaelani (Bandung: Widina Media Utama, 2023).

Servants, and Presidential Instruction Number 1 of 1991 on the Socialisation of the Compilation of Islamic Law (KHI). The presence of KHI is intended to complement Law Number 1 Year 1974 on Marriage. In general, the Indonesian legal system recognises the polygamous form of marriage, but provides fairly strict limits to maintain fairness in marital relations and reduce the negative effects that the practice can cause.⁷ As stipulated in Article 3 Paragraph (1) of Law Number 1 Year 1974, marriage is basically monogamous.

The main requirement to be able to perform polygamy is the existence of acceptable reasons according to the law.⁸ Article 4 paragraph (2) letter c of the Marriage Law and Article 57 letter c of the Compilation of Islamic Law regulate the conditions under which a husband can be polygamous if the following 3 (three) things occur: a) Wife is unable to perform her duties as a wife (Istri tidak dapat menjalankan kewajiban sebagai istri); b) The wife suffers from an incurable disability or disease (Istri mendapat cacat badan atau penyakit yang tidak dapat disembuhkan); c) the wife is unable to bear children (istri tidak dapat melahirkan keturunan). In order to apply for polygamy before the court, the husband must obtain the consent of the first or previous wife and be able to guarantee the needs of the household and be fair.

Specifically for Civil Servants (PNS), permission for polygamy is further regulated in Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants.⁹ When the husband becomes a civil servant,

⁷ Nurul Fadila et al., "Dinamika Politik Hukum Poligami Dalam Undang-Undang Perkawinan: Tantangan Dan Implikasinya Terhadap Sistem Hukum Indonesia."

⁸ Defel Fakhyadi et al., "Kriminalitas Praktik Nikah Siri Dan Poligami Di Indonesia," n.d.

⁹ Nurulia Shalehatun Nisa, Maulana Umar Inamul Hasan, and Arum Al Fakh, "Menyoroti Poligami Bagi Pns Dalam Kajian Perundang-Undangan Hukum Keluarga Islam," n.d.

permission for polygamy must be requested from an official (Article 4 paragraph 1 of Government Regulation No. 45 of 1990). Official means Minister, Attorney General, Head of Non-Departmental Government Institution, Head of Secretariat of State Higher Institution, Governor of Level I Regional Head, Head of State-Owned Bank, Head of State-Owned Enterprise, Head of Regional-Owned Enterprise and Head of Regional-Owned Bank (Article 1 of Government Regulation No. 45 of 1990). As for wives who become civil servants, they are prohibited from becoming the second, third or fourth wife of a husband who is also a civil servant (Article 4 paragraph 2 of Government Regulation No. 45 of 1990).

It appears that the provision of polygamy in Indonesia is in a position between being allowed and being made difficult.¹⁰ This is inseparable from the pros and cons of polygamy. For people who support polygamy, the legislative provisions appreciate it by allowing the practice of polygamy. As for people who reject polygamy, the legislation recognises it by making it difficult to obtain a polygamy licence. This rejection of polygamy is inseparable from the view that polygamy tends to cause various problems in the family, such as domestic violence, child neglect, and others.

Polygamy provisions in some Muslim countries of the world also have diverse attitudes.¹¹ There are two Muslim countries in the world that prohibit polygamy, Turkey and Tunisia. The prohibition of polygamy for Turkish citizens is regulated by the Turkish Family Law of Cyprus 1951.¹² The Tunisian state expressly stipulates that Polygamy is prohibited

¹⁰ Suci Ramadhani Putri et al., "Poligami Indonesia Dan Maladewa: Sebuah Perbandingan Atas Keberangkatan Hukum Keluarga Islam," n.d.

¹¹ Bian Ambarayadi and Andi Molawaliada Patodongi, "Keluarga Poligami Dalam Negara-Negara Islam," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (2024), <https://doi.org/10.47476/assyari.v6i2.6663>.

¹² Dewi Ulfa Lailatul Fitria and Fitri Ariani, "Problematika Poligami Di Negara Turki," n.d., <http://kbbi.web.id/gun-dik/>.

and can even be criminalised, regulated in The Tunisian Code of Personal Status 1957.¹³

Some Muslim countries in the world that allow polygamy with conditions besides Indonesia are Pakistan, Egypt, and Jordan. Pakistan has strict marriage laws. Polygamy without the approval of the Arbitration Council is illegal. As many Pakistani women activists consider polygamy to be discrimination against women's rights, the harshness of the marriage rules especially with regard to polygamy is because they believe that men are more likely to ignore the rights of the first wife after remarrying. With Amendment Law No.100 of 1985, Egypt allowed polygamy. This amendment stipulated that polygamy could be grounds for divorce for the wife if polygamy caused problems with finances, regardless of whether it was listed in the ta'lik talak or not. In Jordan, the marriage law (The Code of Personal Status 1976) prohibits husbands who have more than one wife from living together in one house.

Polygamy is practised for various reasons, including physical, psychological, socio-cultural, authority and religiosity dimensions. Polygamy because they want offspring, previously with the first wife was not blessed with offspring, so remarried in the hope of getting offspring from the second wife.¹⁴ There are also reasons for polygamy because they want children of a certain gender (South Jakarta Religious Court Decision Number 3571/Pdt.G/2014/PA.JS). Polygamy because they want a young

¹³ Mufliha Wijayati, "Family Law Reform In Tunisia(Reading the Rules of Polygamy in The Tunisian Code of Personal Status 1957) POLIGAMI," *Jurnal Ilmiah MIZANI* 1, no. 8 (July 1, 2021): 215–29, <https://doi.org/10.31958/juris.v19i2.2429>.

¹⁴ Sabila Naseer, Sehrish Farooq, and Farah Malik, "Causes and Consequences of Polygamy: An Understanding of Coping Strategies by Co-Wives In Polygamous Marriage," *Asean Journal of Psychiatry* 22, no. 9 (2021), <https://doi.org/10.54615/2231-7805.47221>.

wife or a good-looking wife.¹⁵ Conversely, there are also motivations for women to become second wives for economic or pragmatic reasons.¹⁶ Lastly, polygamy due to cultural normalisation, excessive obedience to religious leaders and believing it to be a field to seek rewards.¹⁷ This dimension is common among polygamous women.

Polygamous marriages on the grounds of childlessness are complex. Especially, when based on the results of the examination by the authorities, it turns out that it is the wife who suffers from infertility. Then the wife will be faced with two choices, between having to be willing to be polygamous or divorced. An example of a polygamy case due to infertility is the Jepara Court Decision Number 1427/Pdt. G/2016/PA.Jepr. This case is about a married couple with childlessness, finally the husband decided to become polygamous. The judge granted the request, referring to the regulation of polygamy permits in Indonesia and the understanding of Islamic law. That polygamy is allowed on the grounds that the wife is unable to provide offspring.

Some examples of divorce cases caused by the wife suffering from infertility, while the husband expects the presence of offspring in their marriage are: Sungguminasa Religious Court Decision Number 584/Pdt.G/2016/PA.Sgm, Sungguminasa Religious Court Decision Number 584/Pdt.G/2016/PA.Sgm, and Bandar Lampung Religious High Court Decision Number 0019/Pdt.G/2020/PTA.Bdl. The pattern that occurs in the three

¹⁵ Guzel Ilgizovna Galieva, "Polygamy as a Form of Marriage: Based on Sociological Research," *KnE Social Sciences*, January 21, 2021, <https://doi.org/10.18502/kss.v5i2.8397>.

¹⁶ Samani Sam'ani et al., "Pragmatism of Polygamous Family In Muslim Society: Beyond Islamic Law," *Samarah* 7, no. 1 (2023): 321-40, <https://doi.org/10.22373/sjhk.v7i1.15874>.

¹⁷ Moh Afandi et al., "Authority, Culture, and Sexuality in the Polygamy of Madurese Ulamas," *Ahkam: Jurnal Ilmu Syariah* 24, no. 1 (2024): 1-16, <https://doi.org/10.15408/ajis.v24i1.36237>.

divorce cases above is that it begins with the knowledge that the wife has infertility so that she is unable to have children, then there is a prolonged quarrel between the husband and wife, finally the husband divorces his wife.

Data from the Central Bureau of Statistics, there were 1,577,255 couples who married in 2023.¹⁸ In the same year, 408,347 couples divorced. These figures are recorded divorces conducted before an authorised institution. Divorces due to polygamy totalled 738 cases. Divorces due to continuous disputes and quarrels totalled 251,828 cases. From this data, it is illustrated that polygamy is one of the factors causing divorce in Indonesia. It is not easy for a woman to live in a polygamous marriage. Childlessness married couples are prone to disputes and quarrels, as evidenced by the three examples of divorce cases above, cases Number 584.Pdt.G/2016/PA Sgm, 584/Pdt.G/2016/PA.Sgm, and 0019/Pdt.G/2020/PTA.Bdl. The three divorces were initiated by the cause of infertility in one of the spouses, which then caused prolonged disputes and quarrels, resulting in divorce.

Reforming the Legal Structure of Polygamy. Reform the institutions responsible for making, monitoring and enforcing polygamy laws. The Executive, Legislative and Judiciary as the main institutions of governance, which make, implement and adjudicate the law in this country must eliminate patriarchal ideologies that harm Indonesian women. As referred to by Julia Suryakusuma as "State Ibuism", a gender ideology created by the State that restricts women with the aim of creating a hierarchical order. In this case, the executive must support the revision of the regulation of polygamy permits in Indonesia, which is only due to the wife being unable to provide offspring. This is because the current regulation clearly discriminates against and harms women.

¹⁸ Badan Pusat Statistik, "Jumlah Perceraian Menurut Provinsi Dan Faktor Tahun 2023," Badan Pusat Statistik, 2024.

Legal Substance : Revision of Polygamy Rules

In Islamic marriage, children are valuable long-term investments, both in this world and the hereafter.¹⁹ Children are a mandate as well as a gift from Allah Swt which is considered the most valuable wealth compared to other wealth in this world.²⁰ Children as a mandate from Allah Swt must always be guarded and protected. According to Wahbah al-Zuhaili, one of the main purposes of marriage is to maintain the continuity of offspring.²¹ Written in the book *Ihya' 'Ulum ad-Din* by Imam Al-Ghazali, the main purpose of marriage is to have children.²² For Imam al-Ghazali, this is in line with the purpose of the creation of the penis and semen for men and the womb for women, where then God gives lust as an encouragement to each man and woman to multiply and maintain God's creation (offspring). This opinion is corroborated by the concept of *maqāsid al-sharī'ah*, which is to protect offspring (*hifz al-nasl*), in addition to protecting religion, reason, soul, and property.²³

Islam encourages people to have children because children and families are a way to get closer to Allah. Children are a comfort to the soul, but children also have the potential to become enemies to parents (Q.S. Al-Anfal verse 28, 48 Q.S. At-

¹⁹ Melinda Aprilyanti and Erik Sabti Rahmawati, "Childfree Dalam Pandangan Abu Hamid Al-Ghazali Nur Rofiah," *Sakina: Journal of Family Studies*, no. 595 (2022): 1-4, <https://doi.org/10.3917/POPSOC.595.0001>.

²⁰ Suci Ramadhani Putri, "Child Protection Affected by the Covid-19 in Indonesia: Islamic Perspective," *Al Hurriyah : Jurnal Hukum Islam* 7, no. 1 (July 12, 2022): 47, <https://doi.org/10.30983/alhurriyah.v7i1.5319>.

²¹ Erfaniah Zuhriah et al., "Childfree, the Digital Era, and Islamic Law: Views of Nahdlatul Ulama, Muhammadiyah, and Gender Activists in Malang, Indonesia," *Samarah* 7, no. 3 (November 1, 2023): 1606-26, <https://doi.org/10.22373/sjhk.v7i3.17753>.

²² Abu Hamid Al Ghazali, *Ihya' 'Ulum al-Din* (Beirut: Dar al-Ma'rifah, 1997).

²³ Solikin and Wasik, "The Construction Of Family Law In The Compilation Of Islamic Law In Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a."

Taghabun verse 14). On the other hand, according to Nur Rofiah As a contemporary Indonesian female cleric, the main purpose of marriage is to obtain a happy/peaceful life (*sakinah*).²⁴ Every action in marriage must involve two parties by considering the ethics of *halalan thayyiban* and *ma'rufan*. Having reproductive organs, the ability to conceive and breastfeed is a nature for women, but using them is a choice (*ikhtiar*). Having children in married life is not the only indicator of being *Sakinah*.

Nahdlatul Ulama and Muhammadiyah as the two largest Islamic organisations in Indonesia divide the law of childlessness into 2 (two), namely *haram* and *mubah*.²⁵ Not having offspring becomes forbidden because it is against the *maqāṣid al-sharī'ah*. In certain cases, it becomes permissible for several reasons, such as health reasons, physical limitations and psychological conditions.

Furthermore, Reforming the Legal Substance of Polygamy. The effort to reform the substance of polygamy law in this study is to revise the polygamy permit regulations in Indonesia, which make the presence of children in marriage a benchmark for granting permission to polygamy. The regulations in question are Law Number 1 Year 1974 and the Compilation of Islamic Law. Article 4 paragraph (2) letter c of the Marriage Law and Article 57 letter c of the Compilation of Islamic Law.

Article 4 of the Marriage Law:

Paragraph 1 : In the event that a husband wishes to be married to more than one person, as mentioned in Article 3 paragraph (2) of this Law, he shall file an application with the Court in the area where he resides.

²⁴ Nur Rofiah, *Nalar Kritis Muslimah*, vol. 2020 (Bandung: Afkaruna, n.d.).

²⁵ Zuhriah et al., "Childfree, the Digital Era, and Islamic Law: Views of Nahdlatul Ulama, Muhammadiyah, and Gender Activists in Malang, Indonesia."

Paragraph 2 : The court referred to in data paragraph (1) of this article shall only grant a licence to a husband who will be married to more than one person if:

- a. wife is unable to fulfil her duties as a wife;
- b. the wife suffers from an incurable disability or illness;
- c. the wife is unable to bear children.

Article 57 KHI : The Religious Court only grants permission to a husband who will have more than one wife:

- a. the wife is unable to perform her duties as a wife;
- b. the wife suffers from an incurable disability or illness;
- c. the wife is unable to bear children.

The urgency of revising the regulation of polygamy permits because the wife cannot provide offspring in Article 4 paragraph (2) letter c of the Marriage Law and Article 57 letter c of the Compilation of Islamic Law is because the two phrases of the Article discriminate and are unfair to women. In Article 28 B paragraph 1 of the 1945 Constitution, it is explained that everyone has the right to form a family and continue offspring through legal marriage, so having children is not an obligation.

Betty Friedan, In her book *The Feminine Mystique* (1963), Friedan criticised social constructions that limited women to domestic roles as mothers and wives.²⁶ Friedan unveiled the idea of "the problem that has no name", which is the feeling of dissatisfaction experienced by many women in America in the 1950-1960 era, even though they had fulfilled the role of the ideal housewife. Friedan asserted that women's roles are not natural.

Women should have the freedom to pursue their identity and life goals following their dreams. An ideal marriage should be based on equality between husband and wife.²⁷ If the law allows husbands to remarry just because the wife cannot get pregnant, then there is an imbalance in power relations:

²⁶ Betty Friedan, *The Feminine Mystique* (United States of America: Vail-Ballou Press, 1963).

²⁷ Betty Friedan.

husbands are given the privilege to find new partners, while wives do not have the same rights. For example, a wife can file for divorce if it turns out that it is her husband who has fertility problems or infertility.

Friedan highlighted that society tends to limit women's identities to wives and mothers, so women who do not fulfil these standards are often deemed failures. In the regulation of polygamy in Indonesia, the reason "the wife cannot have offspring" as a legal basis for remarriage shows that the law still considers women's main function in marriage to be childbearing, not as an equal partner in building a household.

Friedan also highlighted the social and psychological impact of the construction of women's roles in society. She notes that women who feel trapped in traditional roles often experience depression, loss of self-confidence, and feel alienated from wider social life. Friedan referred to this as "The Problem That Has No Name".

In the context of polygamy regulations, rules that allow husbands to remarry because their wives cannot conceive can create psychological burdens for women, making them feel worthless or failed as wives. Therefore, the urgency of reforming polygamy laws from the psychological aspect of women is to consider the psychological impact on women, and not to support policies that can cause trauma or gender-based discrimination. The law should stipulate that marriage is an equal partnership, not a relationship that gives privileges to men. Reforms should lead to the revision of polygamy laws so that they cannot be used as a solution to infertility problems that can be addressed in other ways.

Legal Culture : Changing Society's Views on the Role of Women

Polygamy comes from the Greek language, where "poly" or "polus" means many, and "gamein" or "gamos" means mating or marriage. With this understanding, we can say that polygamy is a type of marriage where a person has multiple partners and is

not limited to their number. Historically, the phenomenon of polygamy dates back to pre-Islamic times. Before the prophet, tribal leaders had the custom of having more than one wife, on average hundreds of wives.²⁸ In other words, pre-Islamic polygamy had no limitations, nor was it even considered as a requirement for the administration of justice. However, when Islam came, the customs of the community were not necessarily abolished entirely, Islam only limited those who wished to marry more than one wife and imposed strict requirements on men who wanted polygamy.²⁹ It can be concluded that polygamy is not an Islamic heritage, but a custom that developed over a long period of time before the teachings of Islam were revealed.

In the context of reforming Indonesia's Legal Culture, the main legal culture that must be reformed is the stigma or assumption that women are tasked with giving birth and then caring for children and their husbands at home. Indeed, the negative stigma of childlessness is felt by both husbands and wives.³⁰ However, the negative stigma tends to be received more by women. The patriarchal ideology that is still entrenched in Indonesian society makes people tend to blame the wife when childlessness occurs. Therefore, it is important to reform the culture of marriage law in Indonesia in a direction that is fairer and does not discriminate against women.

It is undeniable that almost every married couple will crave the presence of children in their lives. Humans can only pray and try, but the presence of children is a gift from Allah Swt. Regarding when and what gender is the qadar of Allah Swt. However, not all married couples can receive the opportunity to become biological parents. The condition of childlessness can be

²⁸ Izomiddin, *Pemikiran Dan Filsafat Hukum Islam* (Jakarta: Kencana, 2018).

²⁹ Fatimatuzzahro and Fifi Nofiaturrahmah, "Poligami Dalam Hukum Islam Kontemporer: Memahami Poligami Dengan Pendekatan Interkonetif," n.d.

³⁰ Senim and Gül, "Gönülsüz Çocuksuzluk: Kadın İnfertilitesi ve Damgalanma Involuntary Childlessness: Female Infertility And Stigma."

a test for marital life, but it does not rule out the possibility for the couple to still reach the level of a Sakinah family. This is because there are various other alternative options to achieve marital happiness apart from polygamy. These alternatives include adopting children and becoming foster parents for children in need. While continuing to wait for the presence of biological children, supported by efforts to utilise advances in health technology in this modern era. Such as IVF (In Vitro Fertilisation) and Artificial Insemination or IUI (Intrauterine Insemination).

In Indonesia, various sources of law in the form of legislation provide definitions of adoption and establish norms regarding the status of adopted children. These include the Compilation of Islamic Law, Law No 23 of 2002 on Child Protection, and Government Regulation No 54 of 2007 on the Implementation of Child Adoption. According to Article 171 letter (h) of the Law on Child Protection, an adopted child is defined as a child whose maintenance for daily life, education costs, and so on switches responsibility from original parents to adoptive parents based on a court decision.

Child adoption is a common practice across cultures and religions as a way to provide protection and welfare to disadvantaged children. Islamic law stipulates that adopted children must maintain their lineage, still following their biological parents. This will have implications for inheritance and mahrams who cannot be married in the future. Quoted by Muzakkir, et al. Muhammad Quraysh Shibab emphasises the importance of treating adopted children with compassion and giving them the rights they deserve, even though they do not automatically inherit from their adoptive parents.³¹ As an option,

³¹ Muzzakir Muzzakir, M. Anzaikhan, and Fouza Azwir Abdul Azis, "Polygamy and Child Adoption in Islamic Law: A Comparative Study of Thought Quraish Shihab and Zakir Nai," *Al-Qadha : Jurnal Hukum Islam Dan*

adoptive parents can give grants or wills to their adopted children as a form of affection in lieu of inheritance.

Jumarim In his research, asserted that couples who are childless, whether due to infertility or otherwise, should not use this as an excuse for polygamy. Another alternative is to adopt a child.³² Jumarim also encourages the removal of articles that make polygamy a way out for couples with childlessness. Therefore, couples with childlessness can once again find happiness, one of which is through child adoption. The couple can still devote love to their adopted child as if it were their own. After all, a child is a gift given by Allah Swt that must be safeguarded and given their rights.

In addition to child adoption, married couples with childlessness can choose to join as Foster Parents. In Indonesia, there is a movement to become foster parents, namely the National Movement of Foster Parents (Gerakan Orang Tua Asuh / GNOTA) Foundation.³³ Foster parents or GNOTA donors play a role in helping provide access to education for children, in the form of shoes, books, school uniforms, school bags and various other needs needed by children. A simple role that is often overlooked but has a huge impact so that children can complete their education. To date, GNOTA has successfully distributed 2.3 million aid packages and monetary donations to help children from underprivileged families. So that these children can continue to go to school and complete their education.

Perundang-Undangan 11, no. 1 (August 28, 2024): 144–57, <https://doi.org/10.32505/qadha.v11i1.9267>.

³² Jumarim, "The Practice of Adoption in the Sasak Community and Its Implications for Marriage Law in Indonesia," *Samarah* 8, no. 1 (March 1, 2024): 445–67, <https://doi.org/10.22373/sjhc.v8i1.18581>.

³³ Yenny Febrianty et al., "Answering the Challenges of Polygamy: Justice and Legal Protection in Islamic and Indonesian Law," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 1 (April 14, 2025): 15, <https://doi.org/10.29300/mzn.v12i1.6930>.

If efforts to reform the marriage law system in Indonesia, especially for polygamy permits due to the fact that the wife cannot provide offspring, are carried out, then in the future, the State can prove that it guarantees a fair and equal life for its citizens, both men and women. Women are no longer placed as "means of reproducing offspring", women must become partners for men in the domestic and public spheres.

From the description of the legal system reform of polygamy permits in Indonesia on the grounds that the wife cannot provide offspring above, analysed using Lawrence M. Friedman's legal system theory, from the aspects of legal structure, legal substance and legal culture, it appears that the state creates a gender ideology that discriminates against women systematically. Through this research, the researcher develops a new term that describes the situation above, the researcher combines the theory of State Ibuisim by Julia Suryakusuma and the theory of legal system by Lawrence M. Friedman's Legal System into "Legal System Ibuisim".

Looking at the legal system (legal structure, legal substance, and legal culture) of polygamy permits in Indonesia, it can be seen that there is still "Ibuisim". Women in the legal system are still trapped with the obligation to serve their husbands, children, families, communities and the state. Women are considered defective because they are unable to provide offspring to their husbands. By the state, this Ibuisim is legalised through legislation that is still in force (Article 4 paragraph 2 letter c of the Marriage Law and Article 57 letter c of the Compilation of Islamic Law), so that husbands can apply for polygamy permission. So that women are only limited to 2 (two) choices, polygamy or divorce. If the law still considers a woman's ideal role to be a "mother", then the law will also be gender biased.

Conclusion

This research highlights the injustice in Indonesia's polygamy regulations that allow husbands to remarry if their wives are unable to bear children. This rule reflects a patriarchal legal system that discriminates against women and reinforces the stereotype that a wife's worth depends on her ability to have children. This research argues that there has been "Legal System Ibuism" in Indonesia's childlessness family polygamy licence policy. The research recommends legal reform in three aspects: legal structure (elimination of discriminatory policies by the executive, legislative and judiciary), legal substance (revision of polygamy rules in Article 4 paragraph 2 letter c of the Marriage Law and Article 57 letter c of the Compilation of Islamic Law), and legal culture (changing society's views on the role of women in marriage). As a solution, alternatives such as adoption, foster parents, and reproductive technology can be prioritised over polygamy. With these reforms, the legal system can be more just and inclusive for women.

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