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## **Polygamy Law Reform Through the Development of the Aceh Qanun: A New Approach to Protecting the Rights of Women and Children in Indonesia**

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### **ABSTRACT**

Aiming to legalize the practice of polygamy through the Raqan regulation, which is then outlined in the family Qanun, it needs to have restrictions on practicing polygamy, such as the concept of justice and sanctions for abuse committed by a husband. The purpose is to protect women as human beings whose rights must be protected along with the obligations and be executed. Then, the research aimed to analyze the construction of Islamic law reform in the family sector, especially in protecting the position of women and children in the context of the structure of the legal order and the occurrence of polygamy without the permission of the Mahkamah Syar'iyah in Nanggroe Aceh Darussalam. The research was qualitative using non-doctrinal juridical or sociological methods to reform the legal order of polygamy in Raqan using studies of legal order theory, *al-hudud* (legal boundaries), and *al-maslahah*, using a historical approach and a legal philosophy approach. The findings showed that the idea of a legal order for polygamy in the family law community in Nanggroe Aceh Darussalam is the implementation of the idea of legal governance between compliance with Sharia and state law perfectly through Raqan renewal. Legal reform is an illustration and parameter in implementing polygamy to realize benefits for individuals and society. And, protect the position of women and children who have not been accommodated in marriage law, so that they can live a harmonious life.

**Keywords:** Polygamy; Law Reform; Aceh Qanun;

### **ABSTRAK**

Melegalkan praktik poligami melalui pengaturan Raqan yang kemudian dituangkan dalam Qanun keluarga, maka perlu adanya pembatasan dalam melakukan poligami, seperti halnya konsep keadilan dan sanksi atas kesewenang-wenangan yang dilakukan seorang suami, sehingga nantinya dapat melindungi perempuan sebagai manusia yang

haknya harus dilindungi beserta kewajiban yang harus dijalankan. Penelitian ini bertujuan untuk menganalisis konstruksi reformasi hukum Islam di sektor keluarga, khususnya dalam melindungi posisi perempuan dan anak-anak dalam konteks struktur tatanan hukum dan terjadinya poligami tanpa izin Mahkamah Syar'iyah di Nanggroe Aceh Darussalam. Penelitian ini bersifat kualitatif melalui metode yuridis non-doktrinal atau sosiologis untuk mereformasi tatanan hukum poligami di Raqan dengan menggunakan studi teori tatanan hukum, *al-hudud* (batas-batas hukum), dan *al-maslahah*, dengan menggunakan pendekatan sejarah dan pendekatan filsafat hukum. Temuan penelitian ini menunjukkan bahwa gagasan tatanan hukum poligami dalam komunitas hukum keluarga di Nanggroe Aceh Darussalam adalah implementasi pemikiran pemerintahan hukum antara kepatuhan terhadap Syariah dan hukum negara dengan sempurna melalui pembaharuan Raqan. Reformasi hukum menjadi gambaran dan parameter dalam pelaksanaan poligami untuk mewujudkan manfaat bagi individu dan masyarakat. Melindungi posisi perempuan dan anak-anak yang belum terakomodasi dalam hukum perkawinan, sehingga mereka dapat menjalani kehidupan yang harmonis.

**Kata Kunci:** Poligami; Reformasi Hukum; Qanun Aceh;

## Introduction

Practically, the occurrence of various reforms in Islamic law, especially the practice of polygamy in society, is an important part to be discussed in this research.<sup>1</sup> Because of that, the legal position and status of polygamy in marriage still reap a lot of controversy and result in injustice. Moreover, psychologically, it may cause feelings of superiority and inferiority. So, it becomes a moral burden among women.<sup>2</sup> The previous fact, even though it has normative support and is seen as an alternative in resolving infidelity and prostitution, then these conditions get support from the aspect of religious law, even considered as part of worship by allowing the practice of polygamy, in condition if someone is able to provide for and act fair. Besides that, polygamy supporters feel that it is not natural for the state to prohibit and threaten polygamous perpetrators with criminal sanctions and is included in the category of minor crimes (*rechtsdeliktern*), although this does not apply to all regions in Indonesia, except for the people of Aceh.<sup>3</sup>

Sociologically, the social conditions of society in Aceh have a variety of uniqueness and includes areas that are given the privilege to implement and apply

<sup>1</sup>James Fenske, "African Polygamy: Past and Present," *Journal of Development Economics* 117 (2015): 58–73, <https://doi.org/10.1016/j.jdeveco.2015.06.005>.

<sup>2</sup>Reza Fitra Ardhan, Satrio Anugrah, and Bima Setyawan, "Poligami Dalam Hukum Islam Dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligam Di Pengadilan Agama," *Privat Law* 3, no. 2 (2015): 100–107, <https://www.neliti.com/publications/164461/poligami-dalam-hukum-islam-dan-hukum-positif-indonesia-serta-urgensi-pemberian-i>.

<sup>3</sup>Fenske, "African Polygamy: Past and Present."

Islamic law *kaffah*, so that the practice of polygamy can be allowed and get legal protection according to social culture<sup>4</sup> through various designs and policies of the regional government of the *Raqan* on the regulation of *Qanuns*.<sup>5</sup> Philosophically, the idea of *raqan* is understood as a form of family law built by the community with the aim of providing legal protection and certainty and elevating human dignity through marital status. In this context, the reform of the polygamy law as outlined through local government policies can give rise to various polemics, as reported by BCC News Indonesia, according to Darwati's statement, that the legalization of polygamy does not need to be included in family law (*Qanun*),<sup>6</sup> where monogamy is seen as still not right and gives rise to various problems, especially with polygamy, the government should provide education to the community to maintain family harmony.<sup>7</sup> In addition, a human rights activist and activist of the Balai Syura Ureung Inong Aceh organization explained that the practice of polygamy can weaken women, which in the end can be used as a culture to have more than one wife.

Based on these statements, the construction of *Qanun* regulation in issuing and preventing the practice of polygamy outside the Mahkamah Syar'iyah becomes an important part of social life.<sup>8</sup> The view has a foundation on the protection to obtain legal rights status for women, as well as preventing the occurrence of unregistered marriages, and socially and legally very detrimental to women, while also increasing the possibility of human rights violations in the household that lead to the rights as a wife cannot be fulfilled properly by the husband. Therefore, through various thoughts on the regulation of the *qanun*, it is expected to be able to build polygamy law, following the local wisdom of the community, and become a grand design in the renewal of Islamic law<sup>9</sup> regarding the practice of polygamy in the community, so that later it gets protection

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<sup>4</sup>Ibnu Elmi A. S. Pelu and Jefry Tarantang, *Hukum Perkawinan (Politik Hukum-Legislati Rancangan Qanun Aceh)* (Yogyakarta: K-Media, 2021).

<sup>5</sup>Oemar Seno Adjie, *Peradilan Bebas Negara Hukum* (Jakarta: Erlangga, 1980).

<sup>6</sup>Najmia Nur Izzati, "Substansi Kebolehan Poligami Dan Relevansinya Dengan Perundang-Undangan Perkawinan Indonesia," *El-Usrah* 4, no. 2 (2021): 499–514, <https://doi.org/10.22373/ujhk.v4i2.11911>.

<sup>7</sup><https://www.bbc.com/indonesia/indonesia-48912627>.

<sup>8</sup>Putri Maulina, "Penerapan Syariat Islam Dari Sudut Pandang Media Dan Perempuan Di Aceh," *Jurnal Komunikasi Global* 8, no. 2 (2019): 190–212, <https://doi.org/10.24815/jkg.v8i2.14959>.

<sup>9</sup>Jefry Tarantang, "Teori Dan Aplikasi Pemikiran Kontemporer Dalam Pembaharuan Hukum Keluarga Islam," *Transformatif* 2, no. 1 (2018): 27–46, <https://doi.org/10.23971/ta.v2i1.882>.

from both the wife and children and creates a benefit in the community (*al-mashlahah*) the middle of society.<sup>10</sup>

Several studies discussed polygamy, such as Danial,<sup>11</sup> Sam'ani,<sup>12</sup> Nasaiy Azis,<sup>13</sup> Dahlia Haliah Ma'u,<sup>14</sup> Maimun,<sup>15</sup> M. Ridwan,<sup>16</sup> Mat Noor Mat Zain,<sup>17</sup> and Rohmansyah.<sup>18</sup> In this context, legalizing the practice of polygamy through the regulation of *Raqan*, which is then outlined in a family *Qanun*, is necessary to obtain restrictions on practicing polygamy, as is the case with the concept of justice and sanctions for arbitrariness by a husband. Later, it can protect women as people whose rights must be protected along with their obligations. Socially, even though the legalization of polygamy in its application has the principle of legality based on the Criminal Law article 1 paragraph 1, as a basis and guide in transferring an act that regulates various provisions, thus legalizing the practice of polygamy is a representation of the principle of legality based on Law Number 1 Year 1974 and PP No. 9/1975, so that it can then be used as the main basis in constructing a regional rule.<sup>19</sup>

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<sup>10</sup>Achmad Kuzani, *Nikah Sebagai Perikatan* (Jakarta: PT Raja Grafindo Persada, 1995).

<sup>11</sup>Danial, "Polygamy in Perspective of Islamic Law Hermeneutics," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 53–74, <https://doi.org/10.29240/jhi.v8i1.5139>.

<sup>12</sup>Samani Sam'ani et al., "Pragmatism of Polygamous Family In Muslim Society: Beyond Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 321–40, <https://doi.org/10.22373/sjkh.v7i1.15874>.

<sup>13</sup>Nasaiy Azis, Rispalman, and Tika Anggraini, "Polygamy in the Perspective of Tafsir Al-Ahkām and Islamic Law: An Examination of the Gayo Luwes Community in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1682–1707, <https://doi.org/10.22373/sjkh.v7i3.20021>.

<sup>14</sup>Dahlia Haliah Ma'u, "The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 669–86, <https://doi.org/10.22373/sjkh.v7i2.8519>.

<sup>15</sup>Maimun, "The Women's Rights in Divorce and Discourse of Gender Equality in the Dynamics of Divorce in Madura," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 468–92, <https://doi.org/10.22373/sjkh.v6i1.12804>.

<sup>16</sup>Muhammad Saleh Ridwan, Wahidah Abdullah, and Idham Idham, "Public Perception of Polygamy in Makassar, Indonesia: Cultural Perspective and Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 20–38, <https://doi.org/10.22373/sjkh.v8i1.15419>.

<sup>17</sup>Mat Noor Mat Zain, Ahmad Faris Zikri Mahsor, and Norhoneydayatie Abdul Manap, "Measures to Curb Polygamy Scams in Malaysia: A Legal Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 1243–66, <https://doi.org/10.22373/sjkh.v7i2.16031>.

<sup>18</sup>Rohmansyah, "Polygamy in the Text of the Qur'an, Hadith and Bible: Theory Systems Approach of Jasser Auda," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (2019): 320–41, <https://doi.org/10.19105/al-lhkam.v14i2.2529>.

<sup>19</sup>Jefry Tarantang, Ibnu Elmi Achmat Slamet Pelu, and Ni Nyoman Adi Astiti, "Urgensi Itsbat Nikah Bagi Masyarakat Muslim Di Kota Palangka Raya," *Jurnal Ilmu Hukum Tambun Bungai* 4, no. 2 (2019): 519–42, <https://doi.org/10.61394/jihtb.v4i2.80>.

Thus, this research is an important part of being able to describe the practice of polygamy that has been stated in the family *qanun*, and how the concepts<sup>20</sup> and implications of regional regulations (*Qanun*) in society, as well as the expectations and responses of the community towards the legalization of polygamy.<sup>21</sup> This research aimed to analyze the construction of Islamic law reform in the family sector, especially in protecting the position of women and children in the context of the structure of the legal order and the occurrence of polygamy without the permission of the Mahkamah Syar'iyah in Nanggroe Aceh Darussalam.

## Method

The research was qualitative, using non-doctrinal juridical or sociological methods to reform the legal order of polygamy in *Raqan* using studies of legal order theory, *al-hudud* (legal boundaries), and *al-maslahah*. Therefore, this study used a historical approach and a legal philosophy approach.<sup>22</sup> Data collection techniques were study literature, journals, books and various documents that support this research to reach conclusions.<sup>23</sup> Thus, practically, this research aimed to provide a holistic and comprehensive understanding of how the framework of law is related to the norms and rules of the *qanun* in order it can be accepted and applied in the community.<sup>24</sup>

## Findings and Discussion

### Thoughts on the Orderly Law of Polygamy in The Draft *Qanun*

At the domestic level, Islam views marriage as a sacred bond, as well as a means of building a future Islamic civilization, and this can be started from the family environment by maintaining and protecting it. Therefore, Islam highly values and considers sacred ties as the main means in building social benefits.<sup>25</sup> Besides that, marriage is a *sunnatullah* that is required to get legality in the community, by building a strong bond or commitment (*misaqan galiza*), loving each other (*mawaddah*

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<sup>20</sup>Ibnu Elmi Achmat Slamet Pelu and Jefry Tarantang, "Fatwa Majelis Ulama Indonesia Sebagai Solusi Permasalahan Umat Islam Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 307–16, <https://doi.org/10.24090/mnh.v14i2.3927>.

<sup>21</sup>Faisal Jamaluddin and Nanda Amalia, "Urgensi Kehadiran Hukum Keluarga Di Aceh," *Jurnal Mimbar Hukum* 269, no. 2 (2017): 248–62, <https://doi.org/10.22146/jmh.16690>.

<sup>22</sup>Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010).

<sup>23</sup>M.Q Patton, *Qualitative Evaluation Methods* (Beverly Hills: SAGE Publication, 1980).

<sup>24</sup>Amirudin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo, 2012).

<sup>25</sup>M Yazid Fathoni, "Kedudukan Pernikahan Poligami Secara Sirri Ditinjau Dari Hukum Keluarga," *Jurnal IUS Kajian Hukum Dan Keadlian* 6, no. 1 (2018): 126–42, <https://doi.org/10.29303/ius.v6i1.525>.

*wa'rahmah*), mutual respect and being full of tenderness (*mu'asyarah bi al-ma 'ruf*), and equality (*al-musawah*). Based on the view, the Qur'an as a guide emphasizes that the practice of monogamy is a form of marriage that is considered the fairest. However, this conception also provides concessions for polygamy with various conditions.<sup>26</sup>

In this context, the legal framework for polygamy is essentially built based on the Qur'an, which states and regulates the permissibility of polygamy by Q.S. an-Nisa verse 3. Historically, the verse was related to the attitude of a husband who wants to marry an orphan, but this verse has a different interpretation among scholars, some even prohibit it. Thus, family law legislation in several countries is related to polygamy rules, so that it can then be clarified into three parts, including; 2) a country that completely prohibits the practice of polygamy, 1) a country that allows polygamy with relatively strict requirements; 3) countries that enforce polygamy.<sup>27</sup> Based on this view, Indonesia as a country with the largest Muslim majority community in the world allows polygamy with certain conditions, especially for the people of Aceh, as this is regulated in local government policies,<sup>28</sup> through the construction of reforms in the field of Islamic law. It regulates the practice of polygamy through local wisdom, through the draft *Qanun*.

In addition, the idea in the field of reforming Islamic law, which regulates the practice of polygamy, has been legally regulated in Law No. 1 of 1974, that the principle of marriage is essentially monogamous. But, the practice of polygamy is also allowed under certain conditions. In this context, the renewal of Islamic law regarding the rules for practicing polygamy is also regulated based on the socio-cultural basis of the Acehnese community through local government policies or draft *Qanuns*,<sup>29</sup> as explained in Articles 37, 38, 39, 40, and 41 Chapter VII, regarding the implementation and practice of polygamy. Thus, the statements, as also stated by Musannif, Chair of Commission VII of the Aceh People's Representative Council, that the regulation of

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<sup>26</sup>Zaki Ulya, "Dinamika Penerapan Hukum Jinayat Sebagai Wujud Rekonstruksi Syariat Islam Di Aceh," *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 5, no. 1 (2016): 135–48, <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/9/0>.

<sup>27</sup>Wajiran, "Polygamy and Muslim Women in Contemporary Indonesian Literature," *Humaniora* 30, no. 3 (2018): 291–304, <https://doi.org/10.22146/jh.v30i3.34821>.

<sup>28</sup>Sulaiman W. et al., "Aceh Government Policy in Preventing Radicalism Through the Existence of Dayah Islamic Education," *Nazhruna: Jurnal Pendidikan Islam* 7, no. 2 (May 2, 2024): 189–208, <https://doi.org/10.31538/nzh.v7i2.4118>.

<sup>29</sup>Said Amirulkamar et al., "Administration Reagent of Aceh Family Law Qanun: Siri Marriage Motives Towards the Legality of Polygyny," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (2023): 129–43, <https://doi.org/10.18860/j-fsh.v15i1.21352>.

*raquan* creates various requirements and is limited to four people.<sup>30</sup> In addition, if the practice of polygamy is not legalized, then women will become victims and will not receive legal protection law.<sup>31</sup> In that context, the dynamics of polygamy law reform in social reality,<sup>32</sup> especially for the people of Aceh, is understood as a form of reaction to the many practices of unregistered marriage in the community and is considered not to provide legal clarity, because the marriages have not been administratively recorded by the religious high court or Mahkamah Syar'iyah.<sup>33</sup>

Based on the total number of residents in the Aceh province, according to Syafruddin, Junior Registrar of the Mahkamah Syar'iyah, states that from January to August 2021, the divorce rate increased by 4-6 percent. Although it did not increase significantly compared to the previous year, the number of cases handled by the Mahkamah Syar'iyah for the 2021 period reached 4,302 cases. Every year, divorce cases continue to increase, with an average increase of 4-6 percent, and never decreases. Meanwhile, the areas with the highest divorce rates throughout 2021, include North Aceh Regency with 503 cases, Bireuen with 354 cases, and Aceh Tamiang with 302 cases. If viewed from the plaintiff's side, in a total of 4,302 divorce cases, 3,288 divorced cases or wives filed a divorce suit against her husband. And, 1,014 cases were carried out by the husband against his wife. In this context, one of the causes of divorce is influenced by the lack of responsibility of a husband to his wife and the emergence of third parties, both infidelity and unregistered marriage.<sup>34</sup>

Thus, based on the various previous issues, the idea of reforming Islamic law through the regulation of the *Raquan* becomes an important part in controlling polygamy law for the people of Aceh, as stated by Teungku Abdurrani Adian, Chair of the Aceh Ulama Consultative Council that, is one of the efforts to prevent the practice of *sirri*

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<sup>30</sup>"Pemprov DPR Aceh Pembahasan Qanun Keluarga, Mengenai Aturan Poligami Maksimal 4 Istri," n.d.

<sup>31</sup>Abdurrohman Kasdi et al., "Fiqh Minority for Papuan Muslims in the Perspective of Maqasid Al-Shari'ah," *International Journal of Islamic Thought* 20 (2021): 1–12, <https://doi.org/10.24035/ijit.20.2021.205>.

<sup>32</sup>Ni Putu Rai Yuliantini, "Upaya Perlindungan Hukum Terhadap Perempuan Dan Anak Korban Kekerasan Seksual Di Provinsi Bali," *Seminar Nasional Hukum Universitas Negeri Semarang* 7, no. 1 (2021): 367–380, <https://proceeding.unnes.ac.id/snh/article/view/713>.

<sup>33</sup>Ratna Batara and Hindun Anisah Munti, *Posisi Perempuan Dalam Hukum Islam Di Indonesia* (Jakarta: LBH-APIK, 2005).

<sup>34</sup><https://retizen.republika.co.id/posts/14764/angka-perceraian-di-aceh-tahun-2021-meningkathingga-6-persen>.

marriage in the community.<sup>35</sup> Therefore, the legality of the practice of polygamy is an important part, as well as an alternative to protection from both the wife and children and the creation of social benefits. In this context, reforms in the regulation of the legal order of polygamy among the public are also part of the form of the application of Islamic law. Through *Qanun*, which are then manifested into positive law to protect various interests that have not been protected by religious norms.<sup>36</sup> Thus, the idea of regulating polygamy in the *Raqan* is expected to be able to regulate, foster, guarantee rights and solve various family problems comprehensively in the community.<sup>37</sup>

### Implementation of Polygamy Through *Qanun* as Regional Government Policy

In this context, the formation of an eclectically codified legislative legislation policy is expected to bring the reforms in the field of Islamic law on the legal order of polygamy in the *Raqan*.<sup>38</sup> Therefore, the practice of polygamy is a controversial issue and raises pros and cons in society.<sup>39</sup> At the theoretical level, the term polygamy is not clearly stated but only concerns the status of a person who has more than one wife. It is stated in law number 1 of 1974, thus that marriage law in Indonesia adheres to the principle of monogamy, even in other aspects.<sup>40</sup> It allows the practice of polygamy with various conditions and certain procedures. Based on this view, the practice of polygamy requires requirements, not only the ability to act fairly but also to obtain the approval of the wife,<sup>41</sup> as explained by Mochtar Kusumaatmadja, that the essence of law basically

<sup>35</sup>Khamami Zada et al., "Muslim Youth Under Sharia Regime in Aceh: From Accommodation to Resistance," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 412–33, <https://doi.org/10.19105/al-ihkam.v17i2.7262>.

<sup>36</sup>Dian Andi Nur Aziz et al., "Examining Qanun in Aceh from a Human Rights Perspective: Status, Substance And Impact on Vulnerable Groups and Minorities," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 37–56, <https://doi.org/10.18326/ijtihad.v23i1.37-56>; Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat," *Al-Ahkam* 32, no. 2 (2022): 131–52, <https://doi.org/10.21580/ahkam.2022.32.2.12130>.

<sup>37</sup>Jaser Audah, *Maqasid Al Syariah as Philosophy of Islamic Law: A System Aproach* (London: The International Institute of Islamic Thought, 2007).

<sup>38</sup>Fathoni, "Kedudukan Pernikahan Poligami Secara Sirri Ditinjau Dari Hukum Keluarga."

<sup>39</sup>Siti Ropiah, "Studi Kritis Poligami Dalam Islam (Analisa Terhadap Alasan Pro Dan Kontra Poligami)," *Al-Afkar: Journal for Islamic Studies* 1, no. 1 (2018): 89–104, [https://al-afkar.com/index.php/Afkar\\_Journal/article/view/9](https://al-afkar.com/index.php/Afkar_Journal/article/view/9).

<sup>40</sup>Nanik Trihastuti et al., "Legal Protection of Stateless Persons Arising From Cross-Border Marriage: Indonesia and East Timor Case Study," *Yustisia* 11, no. 3 (2022): 213–25, <https://doi.org/10.20961/yustisia.v11i3.59287>.

<sup>41</sup>Yufni Faisol, "Konsep Adil Dalam Poligami: Telaah Pemikiran Mushthofa Al-'Adawi Dalam Tafsir Al-Tashil Lita'Wil Al-Tanzil," *International Journal Ihya' 'Ulum Al-Din* 18, no. 1 (2017): 25–48, <https://doi.org/10.21580/ihya.17.1.1730>.

aims to create order and social benefit. As an effort to achieve the objectives, certainty and regularity are needed in regulating the practice of polygamy.<sup>42</sup>

In Bagir Manan's perspective, as an effort to realize justice, it can be achieved in a fairly too, with various parameters including; first; the certainty of rules, material on ideas and ideas of renewal that regulate the practice of polygamy, has been legally regulated in the *Raqan* of family law,<sup>43</sup> in chapter VII article 37 paragraph 1 emphasizes that, a marriage is only allowed by having a wife and a wife is better to only have one person of husband. Whereas paragraph 2, based on the material content in the family law draft, substantially provides opportunities to practice polygamy with certain limitations, where a husband is only allowed to have more than one wife, with various requirements, namely having the ability both physically and mentally, and there is a guarantee to be fair.<sup>44</sup>

Thus, the thought regarding the renewal of the legal order of polygamy in the *Raqan* is understood as a form of dialectical relationship between justice and certainty in understanding the legal limits of polygamy,<sup>45</sup> as stated by Antony Allot, regarding a legal limit that describes its function, among others; 1) law is an abstract and philosophical provision; 2) law is understood as a lower level than norms and positive law, as well as functioning as the golden bridge between idea and reality; 3) law is understood as the lowest level and is concrete, as well as being part of the process of resulting consequences, so that a law can work well.<sup>46</sup> In this context, the certainty of a rule, which is the basis of legal validity can be through the power of rationality and then linked to the renewal of the legal order of polygamy contained in the *Raqan* based on various rules in the community.<sup>47</sup>

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<sup>42</sup>Mochtar Kusumaatmadja, *Konsep Konsep Hukum Dalam Pembangunan* (Bandung: PT. Alumni, 2002).

<sup>43</sup>Bagir Manan, *Sistem Peradilan Berwibawa; Suatu Pencarian* (Jogjakarta: Fakultas Hukum, Universitas Islam Indonesia (UII) Press, 2005).

<sup>44</sup>Darji Darmodiharjo and Shidarta, *Pokok-Pokok Filsafat Hukum, Apa Dan Bagaimana Filsafat Hukum Indonesia*, (Jakarta: PT. Gramedia Pustaka Utama, 2002).

<sup>45</sup>M Syamson Fajar, "Keadilan Dalam Hukum Islam (Tinjauan Multidisipliner Dalam Kasus Poligami)," *Al-Adalah* 12, no. 1 (2014): 33–48, <https://ejournal.radenintan.ac.id/index.php/adalah/article/view/172>.

<sup>46</sup>Antony Allot, *The Limit of Law* (London New York: Butterworths, 1980).

<sup>47</sup>Mu'arifah and Siti Rodhiyah Dwi Istinah, "The Dilemma of Polygamy In Al-Maqashid Syariah & Human Rights Perspective," *Proceeding of International Conference on The Law Development For Public Welfare* 1 (2021): 123–33, <https://jurnal.unissula.ac.id/index.php/icls/article/view/16487>.

The significance of reforming the legal order of polygamy in the *Raqan* is to prioritize protection for a person in practicing polygamy, with several conditions, including a wife no longer being able to carry out her obligations and a wife being sick and not giving birth to children. Based on the various requirements, the Mahkamah Syar'iyah can permit a husband to practice polygamy, rule certainty and protection for a husband to have polygamy by fulfilling one of the alternative requirements, as these provisions have been regulated in the *Raqan* family law in article 39 paragraphs 1 and 2. In this context, various provisions and requirements related to the practice of polygamy can be understood as a procedural rule and become the legal basis for the formation of procedural justice, while substantive justice can become the basis for consideration for the Mahkamah Syar'iyah panel related to the outward ability to ensure the continuity of life.

Second, institutional certainty, it is understood that the construction regarding the renewal of the legal order of polygamy contained in the family law *Raqan* is expected to have various rights and authorities under the Mahkamah Syar'iyah in providing legal services to obtain legal certainty and protection following the powers and decisions issued by the Mahkamah Syar'iyah. Therefore, the position of the panel of judges of the Mahkamah Syar'iyah can accept applications, examine various conditions that are determined, and provide considerations of eligibility to be given the practice of polygamy.

Third, the certainty of the mechanism is understood as a form of justice that is built through various stages and is one of the most important elements in the field of reforming the legal order of polygamy in the family law practice, as reflected in Article 31 which deals with guaranteeing the rights of a husband for those who wish to have polygamy as well as the rights of the husband Mahkamah Syar'iyah to permit to practice polygamy. Fourth, time certainty, one of the most important elements that need to be considered in realizing justice is about time and predictions. It is related to procedures and management in the judiciary (court management), in the process of achieving judicial objectives related to effective, efficient, and productive decision making.

In this context, reforms regarding the legal order of polygamy in *raqan* among the community Aceh is still a subject of discussion, this can be stated in a family *Qanun*, as

a legal basis to legalize and avoid *sirri* marriages,<sup>48</sup> thus the formation of polygamy rules is considered to have a positive impact among society, especially for women, as stated in Law Number 1 of 1974, PP No. 9 of 1975, PP No. 9 of 1983, PP No. 45 of 1990, and the compilation of Islamic law which has been the basis and provisions for the practice of polygamy.<sup>49</sup> The view, as also expressed by Cholil Nafis, Chair of the Indonesian Ulama Council Da'wah Commission, that the draft regarding the legal order for polygamy in the *Raqan* for the community Aceh,<sup>50</sup> has even been substantially regulated by the Indonesian government through Law No. 1 of 1974 concerning marriage which was later changed to law No. 16 of 2019, that legally the practice of polygamy is actually legal and legal based on law No. 1 of 1974 and according to law on Al-Qur'an and al-Hadith. But, it does not mean that everyone can practice polygamy, so there is a need for a legal order for polygamy by providing various requirements and rules formulated by the government.<sup>51</sup>

At the practical level, the idea of reforming the legal order of polygamy in the draft *Qanun*, juridically has the same meaning as the MUI fatwa Number 17 of 2013. Moreover, the chairman of the Aceh *Ulama* Consultative Council supports the legalization of polygamy to be included in local government regulations through the draft *Qanun*.<sup>52</sup> Although the construction of reforms regarding the legal order of polygamy in the *Raqan* received reactions from various parties of pro and contra attitudes, those who are pro and against the illegality of polygamy will agree with the draft *Qanun* to be included in regional regulations. On the contrary, those who are

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<sup>48</sup>Juraida, "Analisis Kasus Tentang Poligami Yang Dilakukan Oleh Pegawai Negeri Sipil (PNS) Tanpa Izin Istri Pertama; Studi Putusan Mahkamah Syariah Banda Aceh Nomor: 130/PDT-G/2013/MSBNA" (PPs Universitas Sumatera Utara Medan, 2016), <https://repositori.usu.ac.id/handle/123456789/20541>.

<sup>49</sup>Rini Fitriani et al., "Legal Protection for Wife and Child as Consequence of Head of Family's Criminal Imprisonment Enforcement," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (2023): 77–88, <https://doi.org/10.24090/volksgeist.v6i1.8232>.

<sup>50</sup>"MUI Tanggapi Wacana Pelegalan Qanun Poligami Di Aceh," n.d.

<sup>51</sup>Ridwan Nurdin and Muhammad Ridwansyah, "Aceh, Qanun and National Law: Study on Legal Development Orientation," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 107–31, <https://doi.org/10.22373/sjhk.v4i1.6416>.

<sup>52</sup>Muzakkir, "The Effectiveness of Aceh's Jinayat Qanun on Crime Rates in the Community in a Review of Legal Socialization," *Al-Manahij: Jurnal Kajian Hukum Islam* 2 16, no. 2 (2022): 255–268, <https://doi.org/10.24090/mnh.v16i2.6643>.

against it will reject it for various reasons.<sup>53</sup> Therefore, the study of the draft *Qanun* has become the subject of discussion in various perspectives, even though the public Aceh in his life is very thick with Islamic values,<sup>54</sup> but women Aceh did not immediately accept it, because it was considered to be detrimental to them.<sup>55</sup>

Thus, the construction of the thought of the rule of law for polygamy in the *raqaan* through the draft *Qanun* and local government policies can bring into various goodness (*al-maslahah*) both individually and socially. Meanwhile, in language, *al-maslahah* comes from the words *salahu*, *yasluhu*, *salah*, which is interpreted well, worthy, and useful. Meanwhile, the word *mursalah* is interpreted as free, and not bound by religious arguments, both those originating from the Qur'an and al-Hadith.<sup>56</sup> In this reality, the idea of renewing polygamy law aims to regulate the practice of polygamy by covering rule certainty, institutional certainty, mechanism certainty, even time, and predictive certainty. Based on the view, Abdul Wahab Khallaf, stated that *maslahah mursalah* is understood that a law aims to realize the benefit both individually and socially, through its main principles following Islamic law, although there is no specific argument that shows it to be recognized.<sup>57</sup>

Based on the various views, the thought of the legal order of polygamy in *raqaan* essentially has the same goal, that a law can be enacted and applied if it contains social benefits. Even though, there is no evidence in the Qur'an and al-Hadith that states the law based on the principle of benefit and avoiding damage or harm. Thus, if there are disadvantages, then the lightest one can be sought and does not cause harm to many people in determining a law, as this is formulated in the renewal of the legal order in polygamy, by providing the basis and certainty of the rules regarding the conditions that

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<sup>53</sup>Juraida, "Analisis Kasus Tentang Poligami Yang Dilakukan Oleh Pegawai Negeri Sipil (PNS) Tanpa Izin Istri Pertama; Studi Putusan Mahkamah Syariah Banda Aceh Nomor: 130/PDT-G/2013/MSBNA."

<sup>54</sup>Fajri M. Kasim et al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syariah* 22, no. 2 (2022): 411–32, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/28747>.

<sup>55</sup>Kurniawan, "Aspek Hukum Pembentukan Qanun No. 3/2013 Tentang Bendera Dan Lambang Aceh," *Kanun Jurnal Ilmu Hukum* 16, no. 3 (2014): 57–84, <https://jurnal.usk.ac.id/kanun/article/view/6018>.

<sup>56</sup>Rahmin T. Husain et al., "Polygamy in the Perspective of Hadith: Justice and Equality among Wives in a Polygamy Practice," *Madania: Jurnal Kajian Keislaman* 6, no. 63 (2015): 93–104, <https://ejournal.uinfabengkulu.ac.id/index.php/madania/artiale/view/1954>.

<sup>57</sup>Abdullah Wahab Khalla, *Ilmu Ushulul Fiqh, Terj Noer Iskandar Al-Bansany*, 2nd ed. (Jakarta: PT. Raja Grafindo Persada, 2002).

must be met in carrying out the practice of polygamy, the obligation to obtain permission from the Mahkamah Syar'iyah, as well as the protection of rights for women and children, can be recognized and protected by law.<sup>58</sup>

Theoretically, the reform of the rule of law in the *rajan* regarding the law of polygamy, according to *Jumhur Ulama*,<sup>59</sup> is expected to be used as a source of Islamic law legislation, by fulfilling various requirements, including *maslahah* is expected to be understood in an essential way and truly brings benefits and rejects harm universally. *Maslahah* is expected to apply in general and does not conflict with the values of the Qur'an and al-Hadith, both physically and mentally. It is not even considered a benefit that is contradictory to the texts, such as equating the distribution of inheritance,<sup>60</sup> between men and women.<sup>61</sup> Thus, the construction of the legal order of polygamy in the family law practice for the Acehese people is the implementation of the results of the dialectic between the thought of orderly law, adherence to Islamic law, and local law.<sup>62</sup>

### **Polygamy Law Reform Through the Development of the Aceh Qanun as a New Approach to Protecting the Rights of Women and Children in Indonesia**

Practically, the construction of polygamy law reform is essentially built through various local government policies, which are then interpreted as *rajan*, and are essentially used as local laws in the community. Aceh, in practicing polygamy, is also one of the areas that can apply Islamic law. The view, although the practice of polygamy still reaps a lot of controversies because it is assumed as a form of injustice and social discrimination against women. However, some also support the legalization of polygamy under the umbrella of the law with various terms and conditions because there is no reason to refuse polygamy when it fulfilled various predetermined

<sup>58</sup>Ahyar Ari Gayo, "Aspek Hukum Pelaksanaan Qanun Jinayat Di Provinsi Aceh," *Jurnal Penelitian Hukum De Jure* 17, no. 2 (2017): 131–54, <https://doi.org/10.30641/dejure.2017.V17.131-154>.

<sup>59</sup>Qurrotul Ainiyah, "Poligami Di Indonesia Dalam Perspektif CEDAW Dan Mazhab Shafi'i," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 17, no. 1 (2017): 61–84, <https://doi.org/10.18326/ijtihad.v17i1.61-84>.

<sup>60</sup>Ibnu Elmi Achmat Slamet Pelu, Ahmad Syaikhu, and Jefry Tarantang, "Tradisi Penyelesaian Sengketa Kewarisan Masyarakat Kalimantan Tengah (Studi Pada Kabupaten Katingan Dan Kota Palangka Raya)," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019): 203–16, <https://doi.org/10.24090/mnh.v13i2.2027>.

<sup>61</sup>Faizah et al., "Peran Lembaga Swadaya Masyarakat Dalam Menyelesaikan Hak Asuh Anak Pasca Perceraian Di Banda Aceh," *Syariah: Journal of Islamic Law* 3, no. 1 (2021): 70– 92, <https://doi.org/10.22373/sy.v3i1.299>.

<sup>62</sup>Abdurrohman Kasdi, "Reconstruction of Fiqh Nusantara: Developing the Ijtihad Methodology in Formulating Fiqh from Indonesian Perspective," *Qudus International Journal of Islamic Studies* 7, no. 2 (2019): 239–66, <https://doi.org/10.21043/qjijis.v7i2.4797>.

requirements. Even, Ahmad Musthofa al-Maraghi stated several criteria of polygamy, such as the wife being infertile, the husband having high sex,<sup>63</sup> having wealth, having capability to finance all the interests of his family, and the number of women exceeding men.<sup>64</sup> Based on this fact, a thought is needed in developing Islamic law reform that regulates the rules for implementing polygamy through local government policies (*Raqan*) as outlined in the family *Qanun*. With the legalization of the practice of polygamy,<sup>65</sup> it is hoped that there will be no more *sirri* marriages which are considered to be detrimental to women.<sup>66</sup>

In this context, the construction of polygamy law reform is basically built through a dialectical relationship between the marriage law,<sup>67</sup> the compilation of Islamic law and local law based on the value system in the Qur'an that allows the practice of polygamy.<sup>68</sup> Thus, the relationship of those three aspects becomes the basis for the draft *Qanun* as a family law to regulates polygamy regulations through local government policies.<sup>69</sup> In a sociological perspective, the construction of polygamy law reform through local government policies as outlined in the family *Qanun*, legally regulated in law number 1 of 1974 and government regulation number 9 of 1975, stated that a man can only marry one woman (monogamy),<sup>70</sup> but for various reasons, a man can marry

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<sup>63</sup>Ibnu Elmi Acamad Slamet Pelu et al., "Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives Marriage Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 39–54, <https://doi.org/10.29240/jhi.v7i1.4204>.

<sup>64</sup>Ahmad Musthofa Al-Maraghi, *Tafsir Al-Maraghi Jilid IV* (Mesir: Mushthafa al-Bab al-Halab, 1969).

<sup>65</sup>Achmad Mudhofar Afif, Maskur Rosyid, and Lutfi, "Gender Equality in Islamic Sharia (the Study of Bisri Mustofa'S Thought in Al-Ibriz Li Ma'Rifah Tafsir Al-Qur'An Al-'Aziz)," *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 1 (2022): 69–88, <https://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/6307>.

<sup>66</sup>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): 367–392, <https://jurnalfsh.uinsby.ac.id/index.php/aldaulah/article/view/490>.

<sup>67</sup>Siti Marlina and Haris Mubarak, "Joint Property After Divorce in Polygamous Marriage: Comparative Research in Indonesia and Malaysia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 2 (2022): 273–87, <https://doi.org/10.30631/alrisalah.v22i2.1289>.

<sup>68</sup>Nur Kholis, Jumaiyah Jumaiyah, and Wahidullah Wahidullah, "Poligami Dan Ketidakadilan Gender Dalam Undang-Undang Perkawinan Di Indonesia," *Al-Ahkam* 27, no. 2 (2017): 195, <https://doi.org/10.21580/ahkam.2017.27.2.1971>.

<sup>69</sup>Abdul Hakim, "Reasons for Polygamy and Its Impact on Muslim Family Life: Experiences of Polygamous Perpetrators in Babat, Lamongan, Indonesia," *Journal of Islamic Law* 3, no. 1 (2022): 34–53, <https://doi.org/10.24260/jil.v3i1.529>.

<sup>70</sup>Zainal Azwar, Firdaus, and Anshari Az-Zarqy, "Polygamy Permits for Business Reasons (Analysis of Sawahlunto Religious Court Ruling Number: 045/Pdt.G/2018/PA.SWL)," *Juris: Jurnal Ilmiah Syariah* 20, no. 2 (2021): 163–77, <https://doi.org/10.31958/juris.v20i2.4385>.

another woman, by obtaining the permission of a wife and fulfilling various applicable provisions.<sup>71</sup>

Thus, the existence and enforcement of the polygamy law, as outlined in the family *Qanun*, is based on local government policies. Moreover, Aceh is an autonomous region that has various privileges in carrying out and implementing Islamic Sharia in society. Therefore, the construction of Islamic law reform that regulates the practice of polygamy through the family *Qanun* has strong legality and legal sources, even though the regulation of the *Qanun* in the family can lead to pro and contra attitudes in society. Moreover, the substance of polygamy law, as outlined in the regional *Qanun*, has several points in common with Legislation Number 1 of 1974 on marriage.<sup>72</sup> Meanwhile, the regulation of *Qanun* in local government policies specifically legalizes the practice of polygamy with various predetermined requirements. And, technically, it must first apply for approval from the Mahkamah Syar'iyah.<sup>73</sup>

## Conclusion

In the construction of polygamy law reform through the draft *Qanun*, a dialectical relationship between marriage law, the compilation of Islamic law, and local law is built through the internalization of the values of the Qur'an and al-Hadith. This relationship became the basis for the formation of the Aceh *Qanun* as a family law that regulates the practice of polygamy through regional government policy. The draft *Qanun* is intended to protect women's rights and prevent unregistered marriages and child abandonment. The legality and strong legal sources in the family *Qanun* give rise to pro and con attitudes in society, which becomes the implementation of legal order reform between obedience to Islamic law and state law. This reform is a model for the polygamy legal order to realize the benefit of society and protect the rights of women and children, which are not yet regulated in the marriage law in Indonesia. The process of determining *Qanun* by the regional government must meet the requirements and be submitted to the Aceh Mahkamah Syar'iyah for technical approval.

<sup>71</sup>Andi Muhammad Asrun, Abdu Rahmat Rosyadi, and Yennie K. Milono, "Mempertanyakan Legalitas Qanun Aceh: Sesuikah Dengan Sistem Peraturan Perundang-Undangan," *Kanun Jurnal Ilmu Hukum* 21, no. 2 (2019): 273–94, <https://doi.org/10.24815/kanun.v21i2.12632>.

<sup>72</sup>Elly Nurlaili Indah Sumarningsih and Wati Rahmi Ria, "Poligami Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam," *Pactum Law Journal* 2, no. 1 (2018): 491–504.

<sup>73</sup>Chairul Fahmi, "Revitalisasi Penerapan Hukum Syariat Di Aceh," *Tsaqafah* 8, no. 2 (2012): 296–310, <https://doi.org/10.21111/tsaqafah.v8i2.27>.

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