



# Decoding Polygamy Permits: Unraveling Sociological and Legal Anthropological Perspectives on Marriage Motives and Conditions

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## Abstract

*Polygamy never runs out to be a subject of study for academics and the general public. One of the derivative issues is the issue of polygamy permits issued by the court. The problem is no longer on whether or not polygamy is allowed, but rather with permission from the court based on the conditions that have been set for those who want to be polygamous. Where these conditions often emphasize the condition of the wife, while the condition of the husband, the polygamous actor has not been given much attention in granting permits. Departing from this background, this paper tries to understand the polygamy permit regulated by stakeholders with a sociological and legal anthropological approach. This approach is used to trace the importance of polygamy permits issued by courts based on the conditions stipulated for polygamy in the realm of sociology and anthropology of Indonesian society itself. As a result, in sociology and legal anthropology, the practice of polygamy in society is based on different motives. Likewise, the granting of polygamy permits the conditions that must be met. The tendency that occurs in the community is that the law is not used as a benchmark in carrying out polygamy. People tend to use their respective customary laws and customs. Thus, the existence of a polygamy permit regulation is one of the preventive efforts to regulate the motives of the marriage by taking into account the conditions that have been agreed upon.*

**Keywords:** *polygamy, permission, sociology, anthropology, law*

## Introduction

Humans tend to look for partners who suit their needs based on the compatibility of traits, character, or personality. The existence of compatibility in their relationship, both physically and mentally, is the key to a relationship. This compatibility has implications for their household relationships. When husband and wife feel compatible with their partner, the true goal of marriage will be created. Marriage includes several important aspects, such as (1) Terms of Marriage. An Ijab Kabul (offer and acceptance) performed in front of witnesses is necessary for a marriage to be recognized under Islamic law, A dowry arrangement, Testimony from the woman's guardian (wali) and Witness testimony are also required (2) Legal Recognition, followed by official registration at the civil registration institution, and (3) Family Life, in Islamic law also regulates the relationship between husband and wife, their obligations in the family, the rights and responsibilities of each party and the rights of children born from the marriage (Mesraini & Yunus, 2023). The main aim of marriage is to obtain a life of *sakinah*, *mawaddah*, and *rahman* (Nasution, 2005).

Sources of marriage law in Indonesia based on Al-Qur'an, the verses of the Qur'an regarding marriage are: (1) Marriage is a condition of the nature of life and its aim is, among other things, to produce offspring to fulfil the life stated in the QS. Al-Dzariyat:9, QS. Yasin:36, QS. AL-Hujurat:13, QS. Al Nahl:72 (2) Marriage is a bond that aims to create peace and tranquillity in life and increase the feeling of love between a man and a woman as well as creating a wider family, even in human life in general. This is reflected in QS. Ar-Rum:21 and QS. AN-Nur:32 (Hayati, Hudafi, Mardiana, & Limbong, 2023).

In principle, marriage in Islam is a monogamous relationship, namely the marriage of one man and one woman at the same time. But for other reasons and certain conditions polygamy is permitted. Polygamy refers as the union of a husband with multiple wives, historical evidence reveals that polygamy was prevalent among diverse cultures even before the rise of Islam. It is worth noting that polygamy was a customary and widely accepted practice among numerous nations (Danial, 2023). Thus, previous study from (Thomas, Harrison, Mogilski, Stewart-Williams, & Workman, 2024), polygamy is a form of one-sided consensually monogamous relationship where one person has multiple committed partners, this consensual were less undesirable than non-consensual ones. All forms of multi-partnering were undesirable relative to singlehood and monogamy.

If you look at the origin of the word, polygamy comes from the Greek, namely *polus* which means many, and *gamos* which means marriage. So, polygamy will mean a marriage of many or more than one person. The marriage system in which a man has more than one wife at the same time, or a woman has more than one husband at the same time, is called polygamy (Mursalin & Zubaedi, 2007). Experts differentiate the term for a man who has more than one wife from the term polygyny which comes from the words *polus* meaning many and *gune* meaning woman. Meanwhile, a wife who has more than one husband is called polyandry which comes from the words *polus* which means many, and *andros* which means man (Drajat, 1985). However, in its use among society, the more popular term is used to indicate that a man who has more than one wife is a polygamist.

Polygamy is a theme that from the past until now has been a serious topic of discussion among legal experts, scholars, and ordinary people themselves. If we look at developments, polygamy has been responded to with different arguments, both pro and con. Some allow polygamy because there is a verse that allows polygamy. The pro group also believes that polygamy is a salvation from household destruction caused by certain factors, such as the wife being barren, unable to give birth, the wife unable to carry out her obligations as a housewife, and polygamy can save women from moral destruction because there are more women than men and there are many widows who need protection from men (Al'Atthar & Nasution, 1976). Meanwhile, others refuse because polygamy makes women marginalized, weakened, put second, husbands will not be able to do justice to their wives, and so on. And they also think that polygamy is an action that means putting an obstacle in front of women, amid their journey towards societal progress. On the other hand, prohibiting polygamy means removing some of the obstacles that slow down the movement of women, and deprive them of their rights and lower their position (Al'Atthar & Nasution, 1976). On the other hand, the goal of marriage will be easily achieved if the marriage is built on a solid foundation; one of which is the existence of *kafa'ah*, that means comfort, commensurate and mate between husband and wife, it implies that a husband is equal to his wife regarding social, moral, and economic levels (Fauzan, Zaelani, Muzakki, Syafi'i, & Bustomi, 2023).

This debate arose because of different interpretations of Q.S an-Nisa verses 3 and 129. These differences in interpretation also resulted in differences of opinion regarding polygamy. In Indonesia, for example, polygamy is discussed in articles 3 to 5 of UU No. 1 of 1974 about Marriage. The Indonesian Marriage Law adheres to the principle of monogamy (1974). However, the law can be said to be inconsistent in emphasizing the principle of monogamy, as evidenced by the continuation of the article which states that polygamy is permitted if desired by the parties concerned with permission from the court (1974). The court will grant permission if there are conditions stipulated in Article 4 of UU No. 1 of 1974.

This then became a separate polemic related to the issue of polygamy in Indonesia, namely polygamy permits issued by the court. The issue is no longer about whether polygamy is permissible or not, but rather about permission from the court based on the conditions that have been set for those who want to practice polygamy. Where these conditions also place more emphasis on the condition of the wife, while the condition of the husband, the polygamous actor is not taken into consideration when granting permission by the court and also the Indonesian Marriage Law itself.

Dutta (2023) studied about these polemic highlights the comparable methods by which women handle marital conflicts while engaging both state and non-state legal system in polygamy practice, prioritizing matters concern to the financial stability and property ownership, showcasing a variety emotion and physiological including betrayal, frustration and emotional pain dispute resolution alternative polygamy cases-handling.

## Methods

This article tries to understand the polygamy permits contained in Articles 4 and 5 of Law No. 1 of 1974 about marriage with a sociological and legal anthropology approach. This approach is used in an effort to find and trace how important a polygamy permit issued by a court is based on the conditions set for practicing polygamy in the realm of sociology and anthropology of Indonesian society itself.

## Results and Discussion

### Concept of Polygamy in Indonesia; Polygamy Discourse in Nash

Islam, as a religion that has universal legal guidelines, has regulated the legality of polygamy, explains what must be achieved in polygamy, and explains the dangers for those who practice polygamy but do not heed the norms of justice. Among the religious texts that explain polygamy is Q.S. an-Nisa verse 3:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَّةَ ۖ وَرُبْعَ ۚ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَذَىٰ أَلَّا تَعُولُوا

*If you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two, three, or four. But if you are afraid that you will not be able to do justice, then (marry) just one person, or a servant you have. that is closer so that you do not commit wrongdoing.*

According to Khazin Nasuha, this verse is a verse that gives men the choice of marrying an orphan but cannot be fair because of their religious beliefs or marrying women they like up to four in number. However, if everything is haunted by the fear of not being able to do justice, it is better to marry yourself to a woman or slave, because this can prevent you from committing abuse (Abdullah & Saebani, 2013). Apart from an-Nisa, verse 3 also explicitly mentions verse 129 which touches on the issue of justice in polygamy.

The Companions narrated that what is meant by justice here is justice in matters of love and inclination of the heart (Al-Jassas & Al-Razi, 1993). This verse denies that a person can do justice perfectly, which includes justice in speech, deeds, living, clothing and love. However, the verse then advises husbands not to show their inclinations blatantly so as not to damage their relationship with their wives. If the verse in the Al-Quran, Surah An-Nisa, verse 3, Allah requires justice, then this verse has selected it to be fair in matters that are visible, such as the distribution of rations and living (Ash-Shan'ani, 2007). Meanwhile, the bed is one of those that is not prosecuted in matters of justice, because it is related to the husband's love (Ajibah & Mohammad, 1998).

Meanwhile, the four madzhab imams are of the opinion that they recognize the existence of polygamy with a maximum of four wives. The four of them also say that it is permissible, not sunnah, let alone obligatory. Even the Shafi'i madzhab considers its sunnah to be monogamous.

Therefore, polygamy cannot be said to be part of Islamic teachings. Islam only limits it with its provisions. And from the explanation above, it can be seen that polygamy must be based on physical justice. We can also conclude that the basis for the permissibility of polygamy and its provisions are surah al-Nisa: 3, al-Nisa: 129, al-Ahzab: 50, the hadith of someone who converted to Islam who was then ordered to have only four wives, the hadith about threats for husbands who cannot be fair, as well as the Prophet's prayer about justice which is only capable of other than the heart.

Overall, the diverse range of fiqh opinions has resulted in a variety of views held by preachers on the issues of polygamy, these views influenced by the interpretation of legal sources that aligned with the legal regulations of polygamy marriage in Indonesia (Yazid, 2023).

#### **Polygamy Permit in Law No. 1 of 1974**

Polygamy is permitted, that's what religion teaches. Law no. 1 of 1974 Article 3 Paragraph (1) explicitly explains that the principle of marriage is monogamy. However, the second paragraph of the article explains that polygamy is possible as long as the parties concerned wish, but this can only be done if certain conditions are met and decided by the court. Furthermore, the issue of polygamy permits in the Marriage Law is regulated in Article 4 Paragraph (1), (2) and Article 5. The words of these articles are as follows:

Article 4 Paragraph (1);

In the event that a husband will have more than one wife as stated in Article 3 paragraph (2) of this Law, he is obliged to submit an application to the Court in the area where he lives.

Article 4 paragraph (2)

- a. The wife cannot carry out her obligations as a wife,
- b. The wife has a physical disability or incurable disease;
- c. The wife cannot bear children (1974).

The explanation of several factors leading to the practice of polygamy based on the Marriage Law include: (1) Female Infertility (2) Sexual Needs (3) The Prophet's Sunnah, (4) Incurable Disease and (5) Ignorance (Ridwan, Abdullah, & Idham, 2024). The law is clear that for someone who wants to practice polygamy, the first thing they must do is submit an application for permission to the court. Apart from that, the requirements mentioned above are sufficient reasons for someone who wants to practice polygamy.

Psychologically, a husband who is hypersexual (high sexual ability) cannot fulfill his needs with one wife, while the wife herself as a woman experiences periods when she is not ready to serve her husband's sexual needs, such as menstruation, childbirth, or being too old, then husbands who can afford it, can practice polygamy for peace of mind and soul. If this is experienced by a husband, he can do so on condition that he submits an application as stated in

Article 4 Paragraph (1) above, taking into account the conditions stated in Article 5 Paragraph (1) as follows;

- a. There is consent from the wife/wives, as long as possible.
- b. There is certainty that the husband can guarantee the living needs of his wives and children.
- c. There is certainty that husbands will treat their wives and children fairly.

For another perspective from law of Malaysia phenomenon of polygamy that refers to the practice whereby a person hitched to more than one companion at the same time and open to broad misunderstandings, particularly for women. Polygamy is lawfully practiced in different nations, in Malaysia, polygamy were practiced by Muslims, but not broadly practiced, due to certain rules which are expresses beneath the Islamic family law, the obligation to get permission form the spouse and authorization from the Shariah court to access into a polygamous marriage contract (Azmi, Nathan, Abdullah, & Hassan, 2023).

Apart from the marriage law comparison above, the provisions for permissibility have also been regulated in the Indonesian Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) which provides the legal basis for granting permission for polygamy through Article 56 Paragraph (3) which states that "Marriage between wives second, third or fourth without permission from the Religious Court, has no legal force."

The provisions contained in the Compilation of Islamic law are essentially Islamic law, which in the narrow sense is local jurisprudence with Indonesian characteristics. It is said that because the Compilation of Islamic Law is extracted from the sources and postulates of Islamic law through *ijtihad* and contemporary legal thought.

On the other hand, an issue about a polygamy scam is an act of defying the law by falsifying manipulating information and polygamy documents by certain parties and syndicates through involves numerous parties, this polygamy scams as a criminal offense under Shariah law. Regarding to this challenges and problems, there is a need for empowering Shariah law by overcoming some of the ambiguities or inadequacies in the law about polygamy (Mat Zain, Mahsor, & Abdul Manap, 2023).

### **Sociological and Anthropological Studies on Polygamy Permits**

The debates surrounding polygamy in Muslim-majority countries like Indonesia are complex and often contentious, one of the main arguments made by proponents of polygamy is that it is allowed under Islamic law and can serve as a way to provide for widows and orphaned children. However, critics argue that polygamy is often used as a tool for male domination and can lead to the marginalization and oppression of women (Widjaja, 2023).

Talking about the sociology of law, our focus will be on discussing the reciprocity or interaction between society towards law and law towards society. Discussion of legal sociology

will impact the effectiveness of the implementation of a law (read: statutory regulations) for society and vice versa. Soekanto said that the sociology of law is a branch of science that studies law in a social context, a branch of science that analytically and empirically studies the reciprocal influence between law and other social phenomena.

Moreover, polygamy is an asymmetric marriage control, formal or informal, secular or religious, legal or illegal that deprives the bride of the right of further marriage while preserving that right for the groom. Even in societies where it is permitted, the possibility of requires the tacit approval of most members of the community and supporting formal institutions that extend far beyond the sphere of the parties (Seligson & McCants, 2022).

Based on the information at the beginning, discussions about legal sociology are discussions about the interaction between law and social phenomena that occur in society. The issue of polygamy is a social problem (read: *muamalah*) that occurs between two parties (husband and wife). It is said to be a social problem because polygamy can have significant impacts on the existence of marital relationships.

Therefore, as a preventive measure, the state provides regulations through legislation that are quite strict to tackle the problem of polygamy. Article 3 Paragraph (1) of the Law explains the principle of marriage, namely that a man can only marry one woman and vice versa. This is in line with the word of Allah Q.S. al-Nisa [4]: 3 which states that if a man is afraid that he will not be able to marry then only marry one. This verse clearly states that a man's ability to have more than one wife is conditional, namely justice. So, the principle of marriage is one wife and one husband.

In Article 4 Paragraph (1) the state limits the practice of polygamy by stating that husbands who want to have more than one wife are obliged to apply to the court. In Article 3 Paragraph (2) it is stated that the court can permit to practice of polygamy if the party concerned wishes. This regulation was issued because many polygamous practices were carried out arbitrarily, resulting in women being discriminated against. More deeply, on the other hand, religious texts explain Surah Ar-Rum verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

*And among the signs of His power is that He created for you wives from among yourselves, so that you would be inclined and feel at ease with them, and He made among you feelings of love and affection. Indeed, in that, there are true signs for people who think.*

In Article 4 Paragraph (1) the state limits the practice of polygamy by stating that husbands who want to have more than one wife are obliged to apply to the court. And in Article 3 Paragraph (2) it is stated that the court can permit to practice polygamy if the party concerned wishes. This regulation was issued because many polygamous practices were carried out arbitrarily, resulting in women being discriminated against. On the other hand, the negative

consequences of polygamy practiced in several communities based on Aziz et al. (2023) as follows:

- a. The perpetuation of injustice towards husbands
- b. The issue of neglecting the rights of wives and children is a matter of concern
- c. Inciting animosity among spouses
- d. Impairment of familial relationship

More deeply, on the other hand, religious texts explain Surah Ar-Rum verse 21:

الضرر يزال

*Harm must be eliminated.*

Apart from the government limiting polygamy with the consent of the parties concerned and permission from the court, Article 4 Paragraph (2) limits polygamy even more strictly, namely: "The court referred to in paragraph (1) of this article only permits a husband who wants to marry more than one wife if:

- a. The wife does not carry out her obligations as a wife;
- b. The wife has a physical disability or incurable disease;
- c. The wife cannot bear children."

The article above is not intended to eliminate polygamy, but rather to prevent abuse of Article 3 Paragraph (2) and Article 4 Paragraph (1). Namely, so that a husband does not carry out polygamy in an unhealthy way. Because it could be that a wife or party concerned has been forced to give consent so that polygamy can be carried out. And in the rules of fiqhyyah, it is stated:

درء المفسد أولى من جلب المصالح

*Preventing damage takes priority over bringing benefits.*

Apart from that, the existence of these conditions may be based on Al-Suyuthi (1965) سد الذريعة (closing shortcuts) from misuse of this article. Departing from the texts that have been quoted and these two articles, the author quotes the opinion of Mukti Ali Jalil who says that the Sharia (Religion-Nas) in determining the basis of polygamy for society (Islam) must be believed to provide benefits for its people. It's just that, at the implementation level, to regulate the practice of polygamy (so that it is not synonymous with discriminating against one of the parties – women, or wives) or to achieve the goal of healthy polygamy, it must go through legalized procedures, namely court permission (Jalil, 2011).

Kassaw & Shumye (2021) highlighted in their article the profound impact of the social, economic, physical and mental health of women and children. Issues such as jealousy, intimate partner violence, lack of social support and economic reliance on their husbands were identified as a key factors contributing to mental disorders among women in polygamous marriages.



Uniformity of the law is essential to prevent confusion and foster peace and tranquility within the community.

### **Anthropological Dimensions of Polygamous Consent**

Legal anthropology provides a holistic analysis of the understanding and nature of humans who act in the name of law, and the reasons why these actions are considered to violate the law. Legal anthropology focuses on the study of legal systems within the scope of human norms and culture. Anthropologically, polygamous marriages (polygyny) are more common in patrilineal societies.

Several scholars previously attribute declining rates of polygamy within changing labour markets for women and higher greater education, urbanization, overalls level of economic growth and development as a linear passage from “tradition” to “modernity” (Kammen & Tian, 2023). Other anthropologists say that the motive for polygamous marriages is economic gain, polygamy is an economic strategy for men. If women have an important role in economic production, especially among horticultural and traditional societies, having many wives means a man can accumulate more wealth. And this has also been proven that 80% of the world's people prefer this form of marriage. However, although the desire for polygamy is very strong, its practice is very restricted in society (Sanderson, 2003).

LBH-APIK (Sanderson, 2003) also gathered that cases of polygamy also occur among people with high incomes. This can be seen in the data below:

Total Income	Number of cases
< 1.000.000	8
1.000.000 – 5.000.000	8
>5.000.000	1
No income	13
Do not fill in income data	6

The data above shows that cases of polygamy most often occur in women who have no income. Polygamy is vulnerable to women who only rely on income from men as their husbands. Furthermore, André & Dupraz (2023) explored that economic empowerment of women through education and business making them less dependent on marriage for their material well-being and improving their bargaining power with respect could increase the weight of their preferences when selected a life partner and prevent to be a second wife that not covered by the Islamic family law regulations.

Thus, if we look at the motives for polygamy that occur, a conclusion can be drawn that the socio-anthropological context of a society has a big influence. In the study from Alhuzail (2023), polygamy had many ramifications for women, children and society in general, many children who grew up in polygamous families were so distressed and loss of fathering of love and attention of a family. However, if we return to law, law is part of a nation's culture (Subekti, 2002) and is not a universal phenomenon. Laws that are never implemented, in essence, have ceased to be law. Lon L. Fuller views law as an effort to achieve certain goals (purposeful enterprise). Likewise, polygamy is in Law No. 1 of 1974, because there is still a gap between theory and practice. Therefore, to achieve the goal of enacting a law, at least the practice of polygamy without permission is gradually reduced or polygamy is implemented proportionally.

In this situation, males who could afford permission to marry more than one woman usually had more resources. In periods when financial resources are scarce, the hazards associated with these social and financial resources are probably reduced (Barclay, Thorén, Hanson, & Smith, 2020). In order to reduce the practice of polygamy without permission, it is necessary to increase awareness and understanding of the law among the community. Public legal awareness is closely related to the factors of whether a particular legal provision is known, recognized, and obeyed. If citizens only know about the existence of a legal provision, then their level of awareness is lower compared to those who recognize it, and so on. In legal sociology, this is called legal consciousness or knowledge and opinion about law (Soekanto & Abdullah, 1987). In the case of polygamy permits, supervision is aimed at the bride and groom, marriage registration employees, and also village government officials. If there is a deviation from the established rules, then the sanctions that have been regulated are carried out as appropriate.

Although some customs allow polygamy without permission, in Indonesian law, every polygamist must obtain permission from the wife or permission from the government. Imam ash\_Syafi'i positions a caliph (read: leader) as befitting the position of a guardian over orphans. This means that a leader has the authority to determine attitudes to create a more prosperous life. Regarding the authority of leaders, al-Shabuni has described it in a rule:

تصرف الامام على الرعية منوط بالمصلحة

Based on this, from legal anthropology, it is found that every society certainly has its own culture. These social practices pose a threat to a woman who accepted the reality of sharing a husband, justify polygamy based on religious or cultural beliefs and try to accept the situation by disregarding the family dynamics, this marks the beginning of self-acceptance in a polygamous marriage (Sukiati & Nor, 2023).

However, every time you apply the law it must be by religious teachings and the law itself. Articles 4 and 5 of Law no. 1 of 1974 concerning Marriage which discusses permits for polygamy is by the teachings of the religion itself without ignoring the plural culture of Indonesian society. The permission for polygamy in the anthropological study of Islamic law itself can be seen finally

in the Compilation of Islamic Law, Book I, Chapter IX, Articles 55 to 59, which discuss the provisions for having more than one wife.

The rise of legal norms in Indonesia to practice polygamy formally has rendered the legal norms governing meaningless. The ongoing conflict between Islamic law and legal law frequently contributed to these issues, despite the potential for synchronization by embracing impartial benefits for both husband and wife (Ma'u, 2023).

## Conclusion

In Law no. 1 of 1974 concerning Marriage in articles 4 and 5, specifically explains that the first thing you want to do if you want to do polygamy is to request a polygamy permit from the local court. Then the polygamist applicant must also pay attention to the conditions mentioned in Article 4 Paragraph (2) and Article 5 Paragraph (1).

In Sociology and Legal Anthropology, Articles 4 and 5 of Law No. 1 of 1974 are one of the government's preventive efforts to regulate marriage, especially in cases of polygamy. By paying attention to the conditions mentioned, polygamy is only an emergency exit. This means that only people who meet the requirements are allowed to practice polygamy, while people who do not meet these requirements are prohibited from doing so.

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