Received: 13 April 2025 | Revised: 06 Mei 2025 | Accepted: 23 Juli 2025

DIKTUM JURNAL SYARIAH DAN HUKUM
pISSN 1693-1777
eISSN 2548-8414

10.35905/diktum.v23i2.13130

ARTICLE

Legal Exception in Indonesian Legal Pluralism: A Study on the Polygyny Permit of Sasaknese Marriage

Murdan*[1], Andi Bahri S[2]

*[1]Correspondence
Murdan
Institut Agama Islam Qomarul Huda Lombok, Nusa Tenggara Barat, Indonesia
Email: prof.murdan@gmail.com

[2]Institut Agama Islam Negeri Parepare, Sulawesi Selatan, Indonesia

Keywords:
Legal Exception, Indonesian Legal Pluralism, State Law, Islamic Law, Sasak Customary Law, Polygyny

Abstract

Background: The legal exception in the study of legal pluralism revealed in this article is not in the context of procedural law. This study highlighted the use of "exception" term. Legal exception is defined as an exception or not included in one carriage of legal reasoning. Through the judge's court decision No. 089/Pdt.G/2010/PA.GM on the Application for Polygyny Permit.

Purpose: This paper aimed to explore and analyze the legal exceptions on plurality legal context of Indonesia related to the issue of hypersexuality and gender justice in polygyny case of Sasaknese Muslim Mariage in Lombok West Nusa Tenggara.

Methods: A qualitative normative approach is employed; departing from the legal facts spesifically in Giri Menang Religious Court, the analysis and discussion applyed in this paper are the reasoning, paradigm, approach, and flow of socio-legal studies in law and society issue.

Results: The findings indicated that the partiality of the judge's reasoning by ignoring the term legal exception in the context of legal pluralism. The judge's decision on the polygamy permit was not based on real legal rationality, but due to the applicant experienced by hyper sexuality. The odd thing of judge's reasoning only considers State Law and Religion, and ignores the Customary Law of Sasak marriage. While the Indonesian marriage law, there is no law that permits a husband to engage in polygamy based on the hypersexuality or other suffers deseases of husband. However, the law allows a husband to be polygamous on the basis of an incurable disease of the wife.

Implication: The serious implication of this study espoused the distortion of the existence of customary law due to the strongest hegemony of state and religious law. Therefore various further studies are needed to reveal the relevance of customary law to positive law in Indonesia.

Originality: The novelty presented in this article are the response of religious court judges to the existence of legal plurality in Indonesia, namely State Law, Religious Law, and Customary Law. The court decision emphasized that judges obey only for state and religious law, and ignored for the customary law. Even though the legal plurality of Indonesian society is directly protected by the constitution.

INTRODUCTION

Basically, this paper tries to present a discussion about the spirit of realizing the true independence of the Indonesian people who are very plural, and more dominantly about the state's accommodative response to the various noble values of the Indonesian people who live in the wrapping of customary law and religious law. The plurality of Indonesian society naturally leads the state constitution to guarantee the existence of customary law (Mansyur & Fallahiyan, 2023).

Based on the spirit of Indonesian independence and the mandate of the constitution, this is a strong reason for the state to make legal harmonization efforts, which directly involve customary, religious and state law. Therefore, as a form of the state's efforts to protect these three legal traditions in the wrapping of Indonesian positive law, the state must find a powerful method in realizing the ideals of independence and this constitution (Trigiyatno et al., 2023). Perhaps one method of legal harmonization that can be a concrete alternative for the state in unraveling this problem is legal interlegalities. However, the constitutional guarantee and all implementing legal regulations regarding the protection of customary law are often not taken seriously by state attributes, including judges (Ilyas, 2015). Judge Decision Number 089/Pdt.G/2010/PA.GM is clear evidence that judges are not accepting the existence of customary law. This verdict granted a polygamy license to a village head in West Lombok solely due to considerations of state and religious law that allowed it, with the strong reason that the applicant suffered from hypersexuality.

In Judge Decision No. 089/Pdt.G/2010/PA.GM on the Application for Polygamy Permit, the Giri Menang Religious Court, West Lombok, West Nusa Tenggara granted the applicant's request for polygamy. In the decision which is already in Portable Document Format (PDF), the Giri Menang Religious Court does not display the name of the applicant, but displays the address and age of the applicant, and likewise the applicant's wife who is also the respondent is not displayed by name, but only the address and age of the respondent. The decision of the Religious Court is not as complex as the decision of the Constitutional Court which displays many things, from the identity of the parties, the sitting of the case, the legal standing of the court to the applicant, the authority of the court, the eligibility of the applicant in the trial, the reason for the test if it is related to the Judicial Review, the opinion of legal experts (legal opinion), petitum, the basis or basis of the lawsuit / application, and so on. In decisions published in PDF form, what is shown or displayed is limited to the identity of the parties, the case, and the petitum, and witness testimony, considerations of the judges, the ruling, and the judge who decided the case.

The term legal exception in this article is attached to the judge's response that is not accommodating to customary law amidst the dominance of state law and religious law. In the discourse of Legal Pluralism, the state plays a very important role in pushing its attributes to play an active role in maintaining customary law. The Constitution of the State of Indonesia which positions judges as representatives of the state and the vanguard of the state in realizing justice for all people must continue to maintain or respect the spirit of the existence of customary law. So, the judge's response that isolates customary law (exception) to the dominance of state law and religious law is very contrary to the basic philosophy of the Indonesian nation state. If the court isolates Customary Law, it means that the judge has acted in a way that is dwarfed by the spirit of independence, dwarfed by the mandate of the constitution, and dwarfed by the spirit of maintaining the identity of the nation. Therefore, this simple article will review the judge's response to the existence of plurality of marriage law in Indonesia by emphasizing the attitude of judges who only consider the formal legal side of state law (automatically including religious law), and do not consider customary law (exception) in cases of polygamy permits for married couples.

Regarding the mainstreaming of the socio-legal approach related to explained problem this paper aimed to explore the issue of hepersexuality and gender justice in Court Rulings,

as well as to analyse the polygyny issue related to legal text and community norm in more integrative, holistic and comprehensive legal analysis. The clustering of legal science as an applied science strengthens the study of legal and law to the multi-trans-interdisciplinary level. Therefore, the socio-legal study applied in this paper is the novel value of this work in revealing other aspects of normative law and empirical law regarding judges' responses to the phenomenon of legal plurality in Indonesia, especially in developing new views in the study of polygamy licensing. Thus, the balance among legal pragmatism, legal idealism, and empiricism can be captured, revealed and explored in a balanced manner.

LITERATURE REVIEW

1. Legal Pluralism Theory

Based on Menski's important notes, legal pluralism was accepted as a term in the academic world of law since the publication of Barry Hooker's writing in 1975 on "legal pluralism". If we trace it through its existence in human life and its social dynamics, then legal plurality has essentially existed since humans were able to live in a group, and some also say that legal plurality has existed since humans have lived an ecological life (establishing harmonious relationships with nature), namely through very classical methods or *chthonic* (Menski, 2019). In the study of Legal Science, awareness of legal plurality in fact, it had long been formulated by several legal experts, for example Jean Bodin as a French thinker, who in 1574 paid special attention to the cultures of society which were important aspects of law. According to Gordon R Woodman, legal pluralism is a view in legal studies which sees the diversity of legal system phenomena practiced by a society (multiple phenomena of legal). In the African context, before colonialists imposed a colonial legal policy, African societies had long had customary law which was based on local agreements and teachings (costomary law). The arrival of colonialists who brought a mission of legal modernization became an important reason for the occurrence of legal pluralism in African society (Woodman, 1996). Also in 1721 Baron Charles de Secondat Montesquieu (1689-1755) write about *lettres persanes* and in 1748 wrote about *De l'esprit des lois*, who in his writing argues that before the existence of positive law, there were first various eternal rules or standards that were owned by a society (Menski, 2019).

Legal pluralism in a pluralistic society is a social fact that cannot be avoided and its existence cannot be avoided. The reality of legal pluralism can sometimes have the potential for legal conflict, which is triggered by the attitude of choosing one law that benefits one party and harms the other. According to Collier, this legal conflict usually occurs only in civil law, and not at the level of criminal law, constitutional law, and administrative law (Collier, 2001).

The use of the word exception in legal discourse is essentially known in civil procedural law. Civil procedural law is a law that regulates the mechanisms and procedures of litigation or trial in court, both Religious Courts and District Courts. According to Amran, the word exception (exceptie in Dutch) in civil procedural law can be interpreted as a stab or rebuttal (objection) or defense (plea) of the defendant or respondent against the subject matter of the lawsuit / request of the plaintiff or defendant. An exception is a parry or rebuttal aimed at matters involving the terms or formalities of a lawsuit, namely if the lawsuit submitted contains defects or formal violations and is not related to the subject matter of the case (verweer ten principal) which results in the lawsuit being invalid so it must be declared inadmissible (Schauer, 2013).

In procedural law, there are several important elements contained in a lawsuit or petition, whether a lawsuit or petition for polygamy permit, divorce, *isbat nikah*, and so on. The important elements that must be present in a lawsuit or petition are material requirements and formal requirements. The material requirements consist of three important elements,

first, the complete identity of the plaintiff, defendant, applicant, or respondent, or the identity of the parties. Second, the *posita* or *fundamentum petendi*. This posita is the reason or argument for filing a petition or lawsuit. Simply put, this posita or fundamentum petenti is the basis of the lawsuit or the basis of the lawsuit (grondslag van de lis). Third, petitum is the subject matter requested by the plaintiff or defendant to be decided by the panel of judges, whether primary, additional, or subsidiary petitium (requesting the court or panel of judges to decide with the fairest possible decision "Ex Aequo Et Bono") (Wiraguna et al., 2024).

After the court and the panel of judges receive the petitioner's or plaintiff's petition, the court or the panel of judges will summon the respondent and the defendant to court to provide information on what is requested by the plaintiff or defendant. The respondent or defendant's answer to the petitioner's or defendant's request for what is alleged by the petitioner and plaintiff before the judge in court is what is referred to as an exception. So, an exception is the defendants` or respondent's answer, objection, or defense to the legal issues alleged by the plaintiff or applicant in the trial and in front of the panel of judges. The important content of the exception is not about the defendant's rebuttal to the contents of the plaintiff's lawsuit or the contents of the applicant's request, but rather contains a request from the respondent or defendant to the court (panel of judges) to reject the claim or request of the applicant or plaintiff, because some legal requirements are not met (Tommy, 2016). Either related to the defects, vagueness of the lawsuit application, or it related for reasons of competence. It could be due to the court's lack of competence, the plaintiff's/ defendant's lack of legal standing, and so on.

The explanation of the word exception is the narrow meaning of the word exception in the field of law, more specifically in the context of trial law. To clarify the intended use of the word exception in this paper, the researcher will return to the general meaning of the word exception. In general, the exception term is defined as exclusion. For example, the Cambridge Dictionary says that exception means "someone or something that is not included in a rule, group, or list or that does not behave in the expected way" (Collier, 2001). So, in general, the word exception can be interpreted as an exception to something that is not included in a rule or legal categorization, group, or not registered as a certain section.

Therefore, the use of the word exception in this work prefers a general meaning, namely exclusion. Thus, we chose the word exception to show the attitude of judges who did not involve customary law as a consideration in deciding cases of polygamy permits in Sasak Islamic community marriages. The judge in his decision only considered aspects of State law and Islamic law, and excluded Sasak customary marriage law. The discussion in this section will analyze the exception of customary law to the dominance of religious law and state law in the judge's decision on polygamy licensing permits at the Giri Menang Religious Court, West Lombok, West Nusa Tenggara.

2. *Judicial Discretion in Islamic Family Law*

Judicial discretion is the authority of a judge to make decisions that are not expressly provided for in the legal text. It allows the judge to consider various factors and the context of the case to reach a just and appropriate decision (Jainah, 2024). In Islamic family law, judicial discretion is based on principles such as justice, greater interests, and avoiding harm (Al Hasan & Yusup, 2021). Judicial discretion in Islamic family law refers to the authority of a judge to make decisions that are not explicitly stipulated in the provisions of the law, but are based on principles of justice and specific considerations of the case. This is important because Islamic law, like other laws, requires flexible interpretation and application to address the complexities of cases that arise (Wiwin et al., 2023). Some examples of the application of judicial discretion in Islamic family law, such as Marriage Dispensation: The judge can grant a marriage dispensation for couples who have not met the age or other

requirements stipulated in the law, if there are strong reasons supporting the dispensation (Sudarmaji, 2021). Likewise in the Determination of Maintenance: The judge can determine the amount of maintenance that is appropriate to the needs of the wife and children, as well as the husband's ability, by considering various factors (Khairuddin et al., 2020). Likewise in Legal Interpretation: Judges can interpret the provisions of Islamic family law flexibly to adapt them to the case at hand, such as the interpretation of divorce provisions (Fealy, 2012).

Discretion plays a role in realizing justice. The judge's discretion helps realize justice in every case, because it can consider special factors that cannot be regulated in legal norms (Mulyohadi & Azhari, 2015). Judicial discretion allows judges to address cases that are complex or undefined in law, such as mixed marriage cases or divorce cases involving psychological factors (Hadi, n.d.). Judicial discretion can help resolve cases more effectively and satisfactorily, because the decisions made can be tailored to the needs and circumstances of the disputing parties.

Judicial discretion in Islamic family law is an essential element that enables judges to make decisions that are fair and appropriate to the context of the case, and to address the complexities that may arise in family life (Hazmi & SH, 2024). However, the application of judicial discretion must be carried out carefully and by considering the principles of justice, legal certainty, and greater interests (A. Hakim, 2022).

3. Comparative Perspectives on Customary Law Recognition

The Indonesia State law essentially does not questioned if there are Indonesian citizens who want to be polygamous, provided that these citizens must be able to fulfill the provisions of positive law in Indonesia (ius constitutum). Positive law in Indonesia allows Indonesian citizens to practice polygamy with the permission of the court. The court and its judges allow a person to be polygamous if the applicant can fulfill several important requirements, such as fulfilling the provisions of article 4 (four) and article 5 (five) of the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. Article 4 (four) and article 5 (five) of Law Number 1 of 1974 stipulate that an applicant for a polygamy license may be permitted by the court to practice polygamy if the wife can no longer fulfill her obligations as a wife; the wife suffers from an incurable disability or disease; and the wife cannot produce offspring. The court may process the applicant's polygamy license application provided that the wife consents to the polygamy; the applicant can ensure that the needs of his wife and children are met; and the applicant can be fair to his wife and children.

By this article, the legal provision that must be concerned of the court is the article 5 of Law Number 1 of 1974 concerning Marriage, where the court must ensure that the first wife is willing to be polygamous, the court must ensure that the applicant can fulfill the needs of the wife and children, and the court must be able to ensure that the applicant can be fair to the wife and children. This legal provision also requires absolute requirements, or must be met as described on the article 5 (five) of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. If the court, in examining a polygamy petition, is able to ascertain that the petition for a polygamy license is justified, then the court may proceed to the next stage. According to the law, if during the examination of the application the court does not find or see any indication that any of the requirements for a polygamy license have been met, then the court may not proceed with the application. If the court is of the opinion that the polygamy application can be processed to the next stage, then the court will upgrade the status of the polygamy license application to the next stage. It could be found in the articles 40-44 of the Republic of Indonesia Government Regulation Number 9 of 1975 concerning Implementing Regulations of Law Number 1 of 1974 concerning Marriage.

This statement shows that the applicant's wife could not be said to be unable to carry out her obligations as a wife, and this fact was disclosed directly in the courtroom. This means

DIKTUM JURNAL SYARIAH DAN HUKUM
pISSN 1693-1777
eISSN 2548-8414

that the facts of the trial revealed that the wife was still ready to serve her husband's sexual needs. However, the panel of judges should have asked for evidence of a wife's authentic statement of her unpreparedness to serve her husband's sexual needs, such as a doctor's certificate of illness. It was not enough for the panel of judges to state that the respondent was unable to fulfill her duties as a wife because during the trial the applicant claimed to have hypersexuality and the respondent claimed that sometimes she was unable to fulfill the applicant's hypersexual needs. Alternatively, the judge could also conduct a sociological investigation to authenticate the wife's inability to serve her husband's sexual needs (Murdan, 2021). In the trial mechanism, the obligations and duties of the judges are to ensure that the legal rules contained in Article 4 of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage can actually be fulfilled by the applicant for a polygamy permit.

Judge Decision No. 089/Pdt.G/2010/PA.GM on a Polygamy Application decided by the Giri Menang Religious Court, West Lombok, West Nusa Tenggara, it appears that the applicant was able to convince the court that Article 5 of Law No. 1 of 1974 could be fulfilled as the main requirement for being allowed to practice polygamy. The applicant was able to convince the judges of the willingness of the first wife and the rest of his family to be polygamous, as evidenced by the testimony of the first wife's younger brother (the applicant's brother-in-law) who testified that the applicant could fulfill the needs of his wife and children through the land and fish pond business owned by the applicant. In addition, to the applicant convincing the judges wherease who could meet the needs of his wife and children, the applicant also managed to convince the judges that he could be fair to his wife and children through the testimony of witnesses. According to witness testimony, the applicant's and respondent's households were harmonious and happy as evidenced by the fact that there had never been any domestic violence and any family quarrels were always resolved in harmony (Rahmatullah et al., 2023).

The most important element of this polygamy lies in Article 4 of Law Number 1 of 1974, which is an important reference for the court and the judges to allow the applicant to practice polygamy, namely the wife is no longer able to carry out her obligations as a wife, the wife has a disability or disease that cannot be cured, the wife cannot bear offspring. Based on the Judge's Decision Number 089/Pdt.G/2010/PA.GM on the Polygamy Application of the Giri Menang Religious Court, West Lombok, West Nusa Tenggara, researchers saw that the applicant did not succeed in convincing the judges of the three important points in article 4 of Law Number 1 of 1974, but the applicant's request was granted by the panel of judges. The researcher saw that the judges imposed their legal reasoning or legal opinion on the granted polygamy case (Alfian & Purwanto, 2024).

The legal facts that were successfully revealed in the trial confirmed that the applicant's wife was still ready to serve the applicant's biological or sexual needs, this was evidenced by a wife who did not experience any illness or was in good health. According to Islamic law, judges are not allowed to get out of actual legal facts, and judges are required to uphold justice as objectively as possible. In Islamic teachings, judges are ordered to be fair, must be fair to a wife, and fair to a husband. So the objectivity of a judge in deciding cases is the most fundamental teaching in Islam. As said by Muhammad Muslehuddin who said that "Islam suggests is the reflexive attitude of mind and objective approach to the problem" (Muslehuddin, 1986, pp. 101–104).

RESEARCH METHOD

This research is a qualitative research that aims to analyze the Socio-Legal paradigm, meaning that the approach, theory, and method of study do not only confine themselves to the juridical-formal line of thought (legal positivism) alone, but further than that follow the philosophical-sociological-anthropological reasoning. With the emphasis that, this paper

never wants to be in line with those who are anti and distort the variety of reasoning among legal positivism, but wants to voice that the study of legal positivism is very important, and will produce a perfect study when combined with a variety of other reasoning and methods, both from theories and methods of social-humanities science studies or with natural science. Therefore, the flow of study offered in socio-legal is an integrated and connected scientific paradigm, and is always interested in multi-trans-interdisciplinary studies.

This article uses and pursues several excellent methods in obtaining, selecting, analyzing, and narrating data. Data collection on the juridical normative side, by accessing the decision of the Girimening Religious Court on polygamy permits. On the empirical juridical level, this research uses observation, interview, and documentation techniques. Observation is used to directly see the customary marriage law of the Sasak community, and at the same time reveal the attitude of the Sasak community towards the practice of polygamy. Interviews were used to explore a variety of accurate information from the Sasak community about their views on the practice of polygamy. The criteria for informants interviewed were those who had direct involvement in this issue. Such as The official of Local Government, Lingsar Village Secretaries, Sasak People, Islamic Leaders, and Adat Leaders. Documentation was used to look at various regulations, rules of law, written works, the information sourced by media related to polygamy in the perspective of the Indonesian state, Islam views, and Sasak ethnic custom. Data selection took the flow of sociological-anthropological studies, meaning that all data was selected based on the strength of narratives in society. If a narrative continues to appear repeatedly, or is very popular in the research field, then the data is considered stronger and more accurate.

Data analysis uses the reasoning of comparison, synergy, and a combination of legal normative reasoning and historical-sociological-anthropological-psychological circles in the development of legal science. Thus, when the research field demands more legal centralism, deductive reasoning is dominant, but, when the research field conditions are more historical-sociological-anthropological, inductive reasoning is more dominant. Likewise, in narrating, reporting and displaying research data, this article follows the narrative culture of the social circles. That is, the data is not explained in the form of numbers and graphs, but is presented in a flowing narrative from the combination of letters forming words, from the combination of words forming sentences, from the combination of sentences forming paragraphs, from the combination of paragraphs forming specific ideas, and from the combination of various ideas forming a complete idea-statement-research report.

RESULTS

1. Hepersexuality and Gender Justice in Court Rulings: Judicial Interpretation vs. Customary Norms

The deep-rooted culture of local patriarchy and religious patriarchy has always been a very interesting issue amidst the growing global discussion on gender justice and equality in recent years. The world community wants equality and parallel social status between men and women. However, the rigidity of local structures and religious structures often becomes a stumbling block to the realization of justice that is balanced between men and women. This case is the most interesting example of the discussion and tug-of-war between state law, religious law, and customary law.

In principle, polygamy is not desired by Indonesian law, only because of the strong pressure from religious law, polygamy is permitted with very strict requirements. The legal reality is, although the principles and principles of Indonesian law do not permit the practice of polygamy, but judges as the spearhead of legal policy seem to agree more with the key articles that permit the practice of polygamy. As a result, no matter how hard customary law rejects and gives negative judgments against polygamy, if the structure of

religious norms and judges grant permission for polygamy, then the customary law community cannot refuse and defend itself.

An interesting fact from the vortex of plurality of state, religious, and customary laws in the context of permitting polygamy is that customary law does not allow the practice of polygamy to occur, while state law and Islamic law are very open to the practice of polygamy. Usually, in some patriarchal societies, religious orthodoxy and local structures are often a strong foundation for the realization of polygamy practices. Quite the opposite is true for the Sasak people who adhere to a patriarchal system in their marriages, but the practice of polygamy is seen as a conflict with local customary marriage norms. This means that the Sasak people want equality and justice between men and women in marriage to be realized.

One interesting phenomenon in Sasak marriages, women never fully depend on men for household welfare. Sasak women are much more independent in ensuring the household economy than men. In this context, the court ruling that directly allows the practice of polygamy has become a hot topic of discussion in society, especially since the person who was allowed to practice polygamy by the Giri Menang court judge, West Lombok, was a village head.

The negative view of polygamy applies not only to the Sasak Islamic community that inhabits the southern region of Lombok, but also to the area where the polygamy case occurred, namely in Lingsar village, Narmada sub-district, West Lombok district, West Nusa Tenggara. According to Azmi, a secretary of Lingsar village, Narmada sub-district, West Lombok, in recent years the Lingsar community has begun to accept polygamy as part of Islamic teachings (Motiejune, 2025), but most have not been able to accept polygamy even though religious teachings justify the practice of polygamy. Azmi further emphasized that, according to the old teachings or value system of the Lingsar community, polygamy is seen as a negative practice in the sense that it is seen as bad behavior, but, as more and more people learn the teachings of Islam and hear various religious lectures, the practice of polygyny has begun to be accepted by a small part of the Islamic community in Lingsar, Narmada, West Lombok district, Nusa Tenggara Barat.[1]

The pros and cons of polygamy in the reality of Sasak society's life in recent years have begun to be resolved with a variety of views that are much wiser. Views that do not belittle the factual reality of polygamy on the one hand, and on the other hand see with a wise view that true marriage is between a man and a woman in forming a peaceful and eternal family, or only death separates. This opinion was conveyed by Muhammad Ahyar, a religious figure, traditional figure, and also a representative of academics in the Narmada area, West Lombok.

Ahyar is very fond and passionate about discussing Polygamy at every opportunity and meeting, both formal and informal. However, Ahyar still chooses to have only one wife, and chooses to live in harmony, peace, and eternity with his wife. Currently, in terms of

[1] Field work interview with Azmi, 34 years old, secretary of Gegelang village, Narmada sub-district, West Lombok district, West Nusa Tenggara province, September 29, 2024. At the time this case occurred, Geglang village was still part of Lingsar village, in recent years Gegelang village has bloomed from Lingsar village, and now Gegelang village has become a separate village. In an in-depth interview, Asmi further emphasized that the majority of Lingsar society still sees polygamy as a less than ideal practice. However, the ideal marriage for them is one with one husband and one wife, and living in family peace.

age, Ahyar is unlikely to practice polygamy because he is already in his 60s, and already has enough or many sons and daughters.[2]

Not only Ahyar who holds such views, more famous religious-community figures in Lombok such as Masnun also have similar views. On the one hand upholding monogamous marriage, but very open to those who practice polygamy.[3]

Table1: Analysis of polygyny permits on decision of Pengadilan Girimenang, Lombok Barat regency, Nusa Tenggara Barat Province

Legal Issue	Islamic Law	State Law	Sasaknese Law	Judicial Reasoning and Considerations
Polygyny Permit	Islamic jurisprudence permit that the polygyny based on the *Al-Quran and* Sunna of the Prophet Muhammad.	Indonesian Marriage Law open to permit of polygyny with some legal reason.	Sasak customary law condemns polygamous behavior. Initially, society saw polygamy as a despicable act.	The Pengadilan Agama Girimenang won by allowing the application for polygyny on the basis of religious and state law permitting it.
Legal reasoning of Polygyny	*Al-Qur'an Al-Nisa'[3]:[3]* The Prophet Muhammad, after the death of Khadijah, his first wife, was recorded in various Islamic documents as practicing polygyny.	Article 4 of Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage, and Compilation of Islamic Laws	under any circumstances, polygyny is not permitted	The Pengadilan Agama Girimenang permitted polygyny because the court was convinced that the husband could act fairly, had hypersexuality, and was permitted by his first wife.
Judge Response to Polygyny permit	The judge sees polygyny as an Islamic teaching and is recommended by religion	The judges ignored the provisions of the marriage law and the Compilation of Islamic Law which regulates that permission for polygyny is given to those who do not have children and whose wives suffer from serious illnesses that cannot be cured.	The judges completely ignored the Sasak customary marriage laws	The judges allowed polygyny because they were confident that the applicant could act fairly and that the hypersexual disease could be cured.
Judicial Considerations for Polygyny	Islamic legal principles emphasize *maslahah* (public interest) and justice for all (wifes, sons, and husband). Some scholars argue for *ijtihad* to accommodate legal changes on isse of polygyny.	Judges interpret Article 4 Undang-Undang Perkawinan with partiality legal reasoning. The rules on polygyny on the compilation of Islamic law as a final concretization of article 4 of the	The court has not complied with the mandate of the Indonesian constitution and article 5 of the judiciary law which orders judges to explore the legal	The court only considers the validity of state law and religious law in deciding on applications for permission to polygyny.

[2] Observed and interviewed with Muhammad Ahyar. Ahyar is an Islamic figure in this area, this is proven by his success in establishing the Darussalam Islamic boarding school in Tanak Beak, Narmada. In addition to being a religious figure, Ahyar is also a community figure and traditional figure in this area. Interestingly, Ahyar is also a Chancellor at one of the oldest Islamic private universities in Lombok based on Nadlatul Ulama, and is recorded as the most productive private chancellor in writing in Lombok and West Nusa Tenggara. So, Ahyar's character is very comprehensive, from religious figures, traditional figures, to academics.

[3] Masnun is the Chancellor of the State Islamic University of Mataram for the 2021-2025 period, and the Chairperson of the Tanfidziyyah Nadlatul Ulama of West Nusa Tenggara for the 2019-2025 period and was re-elected for the 2025-2031 period.

	Indonesian marriage law	values that exist in society

Tabel 1 provides a positive response of judge on interfaith between State and Islamic law, and isolated of Sasak Marriage Law. The table draw many polygyny issues in Indonesia, national legal frameworks, and judicial interpretations, highlighting how Indonesian courts navigate the complexities of legal pluralism among State Law, Religious Law, and Adat Costomary Law.

2. *Polygyny: Between Legal Text and Community Norm*

The first point of Article 4 of Law Number 1 of 1974, which can be said to have failed to find actual or authentic legal facts by the judges, the judges also imposed their will on the second and third points of Article 4 of Law Number 1 of 1974. Numbers (2) and (3) of Article 4 of Law No. 1 of 1974 stipulate that the judge may grant the applicant's request for polygamy if the applicant can prove that the respondent (the applicant's wife) has a serious illness that cannot be cured and that the respondent cannot provide offspring to the applicant.[4] The trial revealed the legal fact that the respondent was very healthy, this was proven through the respondent giving direct testimony in the courtroom regarding her willingness to be polygamous and saying directly that the respondent was unable to serve the hyper-sexual needs of the applicant. This shows that the judge ignored this rule of law, and did not make it the main basis for granting the applicant's request for polygamy. Another unfortunate aspect of the judge's decision was the omission of Article 4(3) of Law No. 1 of 1974, which stipulates that polygamy can be authorized by a judge if a wife is unable to provide offspring.[5]

According to legal facts revealed in the trial, the applicant and respondent are currently blessed with 3 (three) children, the first and second children are female, and the last child is male. This means that the applicant's wife has given offspring to the applicant, so that article 4 point (3) of Law Number 1 of 1974 was violated by the panel of judges who granted the applicant's request for polygamy. Thus, it can be concluded that the court's decision is legally flawed, because it is not in line with existing legal provisions, and is very far from the fundamental doctrine of trials in the *Rechtsstaat* rule of law and the Rule of Law (Perry, 1998). The fundamental teaching of the modern rule of law is that every state official must be authorized on legal grounds, not on the basis of the individual or personal will of persons. Thus, the judge's activities are an order from the law, and judges are required to be loyal to the law in force, as a manifestation of the judges' oath to be loyal to Pancasila, the State of Justice of the Republic of Indonesia, the Constitution of the Republic of Indonesia, and Bineka Tunggal Ika. These four pillars of nation and state are fundamental norms of the Indonesian constitution, according to Michael J. Perry identified that the constitution as the highest rule of the country always uses the word "us nation/society" in every opening (preambule). After being contextualized with Indonesia into ", we, the Indonesian people, stated..." (Alexander, 2001).

In such cases, the judge is required to be more careful in deciding the case, considering that in this case the applicant is the highest official of the village government. The applicant's position in the village government as village head should be an important

[4] See Article 4 of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage, specifically the article that regulates that a husband's permission for polygamy is granted if a wife suffers from an illness that cannot be cured.

[5] See Article 4 (four) of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage.

concern for judges too, the legal considerations of judges should certainly not be equated with society in general. Every action of state officials and village heads as the lowest unit of Indonesian society must one side pay attention to state law, and the other side must not be flawed by customary and religious law. Village Heads are required to submit and comply with Pancasila, the 1945 Constitution of the Republic of Indonesia is regulated in article (26) number (1) of Law of the Republic of Indonesia Number 6 of 2014 concerning Villages, and in article (26) number (2) letter (k) requires that the Village Head has an obligation to resolve community disputes in the Village; And letter (m) regulates that the Village Head is obliged to foster and preserve the socio-cultural values of the Village community.

So, judges are not only required to remain in line with state law, but judges must also remain in line with the norms of religious law and customary law (Ridwan et al., 2024). The order of the judges to keep due regard for the norms of religious and customary law in their sessions is a direct order from article 4 of the law on the Judiciary Article 5 of Law No. 48 of 2009 on Judicial Power, this article reads "judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that live in society".

In this case, judges are no longer required or pay close attention to the law regarding marriage alone, but judges are also required to pay attention to several other laws, for example legal provisions regarding the State Civil Service (Murdan, 2016). Even more interesting, the judge's decision only uses a reference in the form of a letter from the sub-district head to grant the request of the applicant who serves as village head. Caman himself in Law Number 43 of 1999 concerning Principles of Civil Service does not include state officials, because in his facultative article it is said that other state officials are determined by law. In Article 11 of Law Number 43 of 1999, it is regulated that State Officials consist of: President and Vice President; Chairman, Deputy Chairman and Members of the People's Consultative Assembly; Chairman, Deputy Chairman and Members of the People's Representative Council; Chairman, Deputy Chairman, Junior Chairman and Supreme Court Justices, as well as Chairman, Deputy Chairman and Judges of all Judicial Bodies; Chairman, Deputy Chairman and Members of the Supreme Advisory Council; Chairman, Deputy Chairman, and Member of the Financial Audit Agency; Minister, and positions at Minister level; Head of Representative of the Republic of Indonesia abroad who serves as Extraordinary and Plenipotentiary Ambassador; Governor and Deputy Governor; Regent/Mayor and Deputy Regent/Deputy Mayor; and other State Officials determined by law.[6]

From the legal provisions above, the sub-district head is not part of state officials, but the sub-district head is the right hand of the regents/deputy regents and mayors/deputy mayors which appears in Law of the Republic of Indonesia Number 32 of 2004 concerning Regional Government. So, because the sub-district head is an employee of the regent, village heads who want to practice polygamy before and especially after the birth of Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government and Law of the Republic of Indonesia Number 6 of 2014 concerning Villages should ask permission from the regent to practice polygamy, so that the legal basis used is very strong.[7] According to legal provisions, it is not appropriate if the village head who wants to practice polygamy

[6] Look at Article 1 of the Republic of Indonesia Law Number 43 of 1999 concerning the Principles of Personnel.

[7] Compare the position of the sub-district head in Law of the Republic of Indonesia Number 32 of 2004 concerning Regional Government with Law of the Republic of Indonesia Number 23 of 2014 and Law of the Republic of Indonesia Number 6 of 2014 concerning Villages.

asks permission from the sub-district head. However, to be precise, the village heads asked permission directly from the Regent as superior to the Village Head.

The opposite will happen; it could be that a husband must be responsible for unlawful actions that have been committed, which cause great harm to a wife. If it is legally responsible, then a husband must be ready to be led to criminal matters, because it threatens the physical safety of other people. Apart from that, judges must also be able to reveal in the trial the legal question of why a wife is willing to be polygamous. According to Euis Nurlaelawati, Religious Judges in Indonesia, in giving permission to a husband who wants to practice polygamy, must be able to consider various legal and customary law interests as local norms, and must also be able to accommodate women's goodness:

> "...Through these two sets of laws, the state accommodated its varied interests and local practices, and heeded women's interests, paying special attention to the issues of polygamy, divorce, marital property, and post-divorce rights for women"(Nurlaelawati, 2013).

This means that if the wives' willingness is polygamous because there are "shrimp behind the rocks" or other purposes outside the polygamy permit application letter, then the court must have the courage to use legal philosophical reason not to allow polygamy (Nuroniyah, 2020). For example, a husband has committed adultery with another woman, who if a husband does not marry the woman will have an impact on the children and children in the woman's womb that the applicant wants to marry, and will threaten the position of a husband, and so on. Judges are required to be creative and innovative in making various questions to explore legal facts that cannot be presented in the courtroom. In such a context, the panel of judges must give the fairest possible decision, not only to give an advantage to a husband who is going to be polygamous, but to do justice or a greater advantage to his wife and children. Judges as judicial representations of the state suffer a great loss if their progressive attitude is abandoned by the executive, because of the executive's barrenness in resolving legal issues, they are still given discretion in resolving legal issues (Murdan & Mustaqilla, 2022).

DISCUSSION

1. *Hepersexuality and Gender Justice in Court Rulings: Judicial Interpretation vs. Customary Norms*

One of the most dominant legal issues in the court's decision on polygamy permit is the court's response to the husband's polygamy permit on the basis that the husband has hypersexual disease. Of course, this is a very interesting legal fact and trial fact in granting polygamy permission. In terms of legal rules, this legal reasoning is not found in the provisions of marriage law in Indonesia. Interestingly, when referring to Islamic teachings that guide the life of the Sasak community in Lombok, hypersexual husbands are not an effective solution by allowing husbands to have more than one wife, provided that a husband is always accompanied and can be fulfilled by his wife. This is different from husbands who are not accompanied by their wives for more than six months, and their sexual needs cannot be fulfilled, and so on. Islam provides a solution that, if a husband is interested in having sexual relations with another woman, husbands are ordered to immediately have sexual relations with their wives. Islam itself teaches a husband who is interested in another woman who is not his wife, Islam advises the man concerned to come to or have sex with his wife. Because by having sex with a wife, a man's sexual desire for a woman who is not his wife can be erased. This can for example be found in the following hadith of Rasulullah Muhammad SAW (إذا رئ احدكم إمراة فأعجبته فليأت أهله فإن معهامثل الذي معها: رواه الترمذي). So, it is natural for Islam to use the narrative that if a wife does not serve her husband's sexual needs, the angels will curse her.

The important purposes of the narrative of "wives will be cursed by angels if they do not fulfill their husband's sexual needs" are to avoid greater social impact. If the sexual needs of husbands are not served, it may lead to immoral behavior due to the hyper-sexuality of the husbands. This statement is in line with the rules of jurisprudence which say " درأ المفاسد أولي من جلب المصالح", or preventing (preventive) takes precedence over taking benefits (M. L. Hakim, 2020). Therefore, judges should not simply grant permission for polygamy just because a husband has a hyper-sexual disease. This is unfair to the wife, because it is the husband who has the disease, but it is the wife who bears the burden and punishment. Of course, the rationality of state marriage law is inversely proportional. In state law, if it is the wife who has the disease, then it is the wife who bears the consequences and legal consequences. Vice versa, if it is the husband who suffers from the disease, then it is not the wife who is punished, but the husband who is punished. This judge's decision creates a new norm, not discovers the law, this is evident from the judge's decision that reverses the legal provisions, namely, a husband who has an illness, but who bears the legal consequences is a wife.[8]

In Sasak customary marriage law, a husband's hyper sex is not seen as a sexual disease possessed by a man. But it is seen as an immoral and uncivilized act of a man. If a man is married, then attracted to other women, he will usually be said to be an immoral man, or Sasak people often refer to him as a masher. Men who are attracted to women other than their wives are also often said to be weak in faith. When researchers asked Ripai, what if you are attracted to women other than your wife? Ripai replied that, "I still have a strong faith, so, I am sure that I will not be able to be attracted to women other than my wife".[9] Such is the face of marriage for the men of the Sasak Islamic community who inhabit the southern region of Lombok, for them, after marrying, they must be ready to be loyal to one wife, not divorce, let alone be polygamous. Polygamy is not only seen as a negative act of a husband, but polygamy is also seen as a form of the strength of a man's faith.

2. *Polygyny: Between Legal Text and Community Norm*

One of the most interesting legal issues in a patriarchal society is polygamy. Arab society as the place of the revelation of the Quran and the apostolic process of the prophet Muhammad is very famous for its patriarchy. With such a societal background, it is very natural that Islamic society is known for its tradition of polygamous practices. Indonesian society as the majority of Muslims is certainly quite difficult to release the strong influence of the patriarchal heritage of Arab society. This factual condition also has significant implications for the attitudes, reasoning, ideals, and psychological conditions of religious court judges in Indonesia. In fact, although Indonesian marriage law adheres to the principle of monogamy or does not allow polygyny, it still provides the key to polygamy in its juridical basis. This shows that the influence of Arab patriarchy is very strong in the social life of Indonesian Muslims. Of course, this environmental reality also has a great influence on every religious judge in Indonesia.

---

[8] See article 4 of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, especially the article which regulates that a husband's polygamy permit is granted if a wife experiences an illness that is impossible to cure.

[9] Interview with Ripai, 56 years old, a resident of Mengkudu Daye, Landah Village, Praya Timur District, Central Lombok Regency, West Nusa Tenggara. In Ripai's view, polygamy is a behavior that is contradictory and deviates from Islamic faith. When the researcher asked, do you want to practice polygamy, he quickly and without hesitation made the statement, "I still have faith". This means that strong faith and piety will prevent Ripai from practicing polygamy.

DIKTUM JURNAL SYARIAH DAN HUKUM
pISSN 1693-1777
eISSN 2548-8414

According to Indonesian procedural law, judges are required to continue to explore the truth and the actual legal facts. Before the judge decides on the polygamy permit case, the panel of judges can order the applicant and respondent to undergo a medical check, and if possible the medical team used is a medical team from a trusted state institution, for example the police medical team, and so on. If the judges only swallow what is conveyed by the applicant and respondent, without having to do in-depth exploration, through various authentic evidence and explore the facts that exist from the statements of the applicant and respondent (Fauzan & Yurisprudensi, 2015). The fear is that judges may be exposed to violations of the code of ethics and violations of abuse of authority. The legal consequences of the actions of state officials that can be proven legally, judges can be subject to the sanctions of the judge's code of ethics, and sanctions regulated in laws and regulations, which can be in the form of written warnings, temporary dismissal, or dismissal as a judge.[10]

Legal facts like this should be of concern to judges, because they are not in line with the spirit desired by the lex specialis regulated in law Number 1 of 1974 concerning marriage. The law requires that marriages be based on monogamy, but in legal pragmatism polygamy is very easy for judges to grant as the main guardian of the law.[11] If the law requires marital monogamy, then the practice of polygamy is complicated, as in the legal regulations contained in Law Number 1 of 1974. Legal commitment to the principle of monogamy which is absorbed in Indonesian marriage law is not only practiced in its written legal regulations (Wirastri & Van Huis, 2021), but all state officials who handle polygamy must also complicate the chances of polygamy occurring. Included in this, judges who serve as the vanguard in realizing written law must be in the same breath as the spirit of the law itself (Hidayatullah, 2020). With the spirit of religious judges like this, Islamic law can trace its positive contribution to Indonesian national law. But if religious judges' legal reasoning is unfounded, it will give the impression that religious law is a burden on contemporary law (Maryani et al., 2022). Judges should not only look at wives' willingness to be polygamized, but judges should also look at other points, such as is it true that wives are no longer able to carry out their obligations as wives? Is it true that wives cannot give birth to husbands? Is it true that wives experience serious illnesses that cannot be cured?.[12] If the legal provision cannot be proven in the trial, the judge is required to have the courage to decide that the polygamy permit is canceled in the name of the law.

These three legal questions must be able to be answered with legal facts and trial facts by judges. Apart from the judges being obliged to answer this question based on legal facts and trial facts, the judges must also be able to guide the trial mechanism to answer questions about why a wife cannot give offspring to a husband, why is a wife no longer able to carry

[10] The Honorary Council of Judges (MKH) from the 2009-2017 period dismissed 31 (thirty one) judges on a permanent dismissal basis, and 16 (sixteen) judges were given the sanction of not tapping the hammer or not having a trial for 3 (three) months to 2 (two) years, one judge was given a written warning, and one judge resigned before the MKH session was held. Look Komisi Yudisial Republik Indonesia, "Committing KEPPH Violations, 31 Judges Dismissed in MKH", Komisiyudisial.go.id, Accessed October 28, 2024".

[11] Look at articles (3)-(4) of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage.

[12] The idea for this question came from article 4 of Law Number 1 of 1974 concerning Marriage, and Articles 55-59 of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law.

out her obligations as a wife? And why does a wife experience a serious illness?[13] If the judges can lead the trial to answer several legal questions based on legal facts and trial facts, and for example it is revealed very clearly in the trial that a wife can no longer carry out her obligations as a wife due to the actions of a husband who violates legal provisions, a wife cannot give offspring to a husband due to the actions of a husband who violates the law, and a wife experiences a serious illness due to the unlawful actions of a husband, so judges may not grant the applicant's request for polygamy. With this more progressive legal reasoning, judges are no longer accused of being the minions of positivism and legal formalism, which are considered to often discriminate against the poor (poverty), defenseless people (powerlessness), weak people (physical weakness), and other minority communities (Warassih et al., 2005).

CONSLUSION

In the case of polygamy permit in Sasaknese Marriage with the Judge's Decision Number 089/Pdt.G/2010/PA.GM concerning the Polygamy Application for the Giri Menang Religious Court, West Lombok, West Nusa Tenggara, it explained that the Giri Menang Religious Court granted the polygamy permit. The granting of this polygamy permit in Indonesian Law, Islamic Law and Sasak Marriage Customary Law gives the impression that the court is only looking for a safety, or the court only considers the State law aspects as well as Islamic religious law aspects. However, it did not relate to take the slightest aspect of customary law to explore the polygyny practice.

The Giri Menang Court`s decision is intended as a customary law exception to the dominance of Islamic law and State law. It interested to analyze it, the court allowed the applicant to practice polygamy not on the basis of fulfilling the absolute requirement for polygamy, but based on the judge's dominant reason on the applicant experiencing hypersex. Although, in order to realize justice for wives, it is time for the panel of judges to use a more sensitive approach to social justice, which is not only busy with aspects of legal certainty, but it can also to fulfill the sense of legal justice that grows and develops in society. Therefore, the judges are no longer accused of being lackeys of positivism and legal formalism, which are considered to often discriminate against the poverty poor, powerlessness people, physical weakness people, and other minority communities. If the judge sees that polygamy has the potential to violate one of the existing legal provisions, whether customary, religious or state law, the judge should not grant the request for polygamy permission.

Last but not least, this study recommended to the need of an interlegal justice attitude, which the response of the judges is not only limited to paying attention just to the legality aspect, but judges who are able to accommodate all legal norms recognized by the Indonesian constitution. In terms of normative development, Indonesian law has mandated that judges base themselves on State, Religious, and Customary Law in deciding cases. Likewise, in the context of legal reform, Indonesian law has greatly accommodated legal plurality, so legislative steps in this context are quite established. Thus, the disharmony of legal, religious, and customary norms in this case is caused by the judge's response that is not accommodating to customary law; therefore various further studies are needed to reveal the relevance of customary law to positive law in Indonesia.

[13] The idea for this academic question arose from articles 40-44 of Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning Implementing Regulations of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage.

REFERENCES

Al Hasan, F. A., & Yusup, D. K. (2021). Dispensasi Kawin Dalam Sistem Hukum Indonesia: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, *14*(1), 86–98.

Alexander, L. (2001). *Constitutionalism: philosophical foundations*. Cambridge University Press.

Alfian, M., & Purwanto, M. R. (2024). *Critical Analysis of Orientalist Understanding of Polygamy Sharia*. Universitas Islam Indonesia.

Collier, J. G. (2001). *Conflict of laws*. Cambridge University Press.

Fauzan, H. M., & Yurisprudensi, K. H. (2015). Norma-norma Baru Dalam Hukum Kasus. *Cetakan Kesatu, Jakarta: Kencana*.

Fealy, G. (2012). *Ijtihad Politik Ulama; Sejarah NU 1952-1967* (Vol. 1). Lkis Pelangi Aksara.

Hadi, A. (n.d.). *Itsbat nikah poligami pra dan pasca SEMA Nomor 3 Tahun 2018 dalam perspektif teori kepastian hukum dan maqāsid al-syarī 'ah*. Fakultas Syariah dan Hukum.

Hakim, A. (2022). Reasons for Polygamy and Its Impact on Muslim Family Life: Experiences of Polygamous Perpetrators in Babat, Lamongan, Indonesia. *J. Islamic L.*, *3*, 34.

Hakim, M. L. (2020). *Fiqh Mawaris I*. Pontianak, IAIN Pontianak.

Hazmi, R. M., & SH, M. H. (2024). Teori dan konsep. *Pengantar Hukum Progresif*, *29*.

Hidayatullah, S. (2020). Transformasi Dan Kontribusi Hukum Islam Sebagai Sumber Hukum Di Indonesia. *Jurnal Pro Justice: Kajian Hukum Dan Sosial*, *1*(2), 1–9.

Ilyas, M. (2015). Faktor sosial budaya dan aturan perundangan. *Diktum*, 30–39.

Jainah, S. (2024). *Tinjauan kaidah Hukmu Al-Hakim Yarfa'u Khilaf dan diskresi hakim terhadap putusan MA No. 498 K/PID/2017*. UIN Sunan Gunung Djati Bandung.

Khairuddin, K., Badri, B., & Auliyana, N. (2020). Pertimbangan Hakim Terhadap Putusan Nafkah Pasca Perceraian (Analisis Putusan Mahkamah Syar'iyah Aceh Nomor 01/Pdt. G/2019/MS. Aceh). *El-Usrah: Jurnal Hukum Keluarga*, *3*(2), 164–189.

Mansyur, S., & Fallahiyan, M. A. (2023). Kompleksitas Pelaksanaan Wasiat Wajibah di Pengadilan Agama Mataram. *Jurnal Risalah Kenotariatan*, *4*(2).

Maryani, H., Tarigan, A. A., & Azmi, A. (2022). *Politik Hukum Islam Pergumulan Politik dalam Legislasi Hukum Islam di Indonesia*. Merdeka Kreasi Group.

Menski, W. (2019). *Perbandingan hukum dalam konteks global: Sistem Eropa, Asia dan Afrika*. Nusamedia.

Motiejune, G. S. (2025). Polygamy in Islam: A Study on Its Religious Justifications and Empowerment of Women Within Islamic Teachings. *QiST: Journal of Quran and Tafseer Studies*, *4*(1), 59–74.

Mulyohadi, A. M., & Azhari, A. F. (2015). *Disparitas Pidana Putusan Hakim Atas Perkara Pidana Anak Dalam Perspektif Perlindungan Hak-Hak Anak (Studi Kasus Pengadilan Negeri Boyolali Tahun 2009-2013*. Universitas Muhammadiyah Surakarta.

Murdan, M. (2016). Harmonisasi Hukum Adat, Agama, dan Negara dalam Budaya Perkawinan Masyarakat Islam Indonesia Belakangan. *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, *50*(2), 505–535.

Murdan, M. (2021). Membaca Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi dari Perspektif Sosiologi Hukum. *Indonesian Journal of Shariah and Justice*, *1*(1), 123–144.

Murdan, M., & Mustaqilla, S. (2022). Diskresi dan Negara Hukum: Mewujudkan Hukum

Berkeadilan Masyarakat. *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum*, *11*(1), 148–163.

Muslehuddin, M. (1986). *Philosophy of Islamic law and the orientalists: a comparative study of Islamic legal system*.

Nurlaelawati, E. (2013). Islamic Justice in Indonesia: Family Law Reform and Legal Practice in the Religious Courts". *Asia-Pacific Research Center Bulletin*, *9*, 25.

Nuroniyah, W. (2020). *Progres Hukum Islam Indonesia Pasca Reformasi (Dimensi Hukum Nasional-Fiqih Islam-Kearifan Lokal*.

Perry, M. J. (1998). *What is' the constitution'?(and other fundamental questions)*.

Rahmatullah, P., As-Suvi, A. Q., Rofiq, M. A., & Mahsyar, N. M. (2023). Comparative Study of Polygamy Marriage Regulations in Turkey, Russia, and Jordan: A Priority Fiqh Perspective. *DIKTUM*, 137–146.

Ridwan, M. S., Abdullah, W., & Idham, I. (2024). Public perception of polygamy in Makassar, Indonesia: Cultural perspective and Islamic law. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, *8*(1), 20–38.

Schauer, F. (2013). Exceptions. In *Precedents, Statutes, and Analysis of Legal Concepts* (pp. 245–273). Routledge.

Sudarmaji, W. (2021). Pertimbangan Hakim Dalam Memutuskan Perkara Dispensasi Nikah Berdasarkan Analisis Maslahah (Studi Penetapan Hakim No. 266/Pdt. P/2020/PA. Pwr di Pengadilan Agama Purworejo). *Al-Syakhsiyyah: Journal of Law & Family Studies*, *3*(1), 131–144.

Tommy, S. T. (2016). Eksepsi Dalam KUHAP Dan Praktek Peradilan. *Lex Crimen*, *5*.

Trigiyatno, A., Rahmawati, D., & Utomo, P. (2023). Comparative Analysis of the Polygamy Regulations in Indonesia and Morocco. *DIKTUM*, 34–48.

Warassih, E., Medan, K. K., & Mahmutarom. (2005). *Pranata Hukum: sebuah telaah sosiologis*. Suryandaru Utama.

Wiraguna, S. A., Ramadhani, W., Karim, A., Nazmi, N., Irwanto, I., Sihite, S. R., Sholehudin, M., & Surya, A. (2024). *HUKUM ACARA PERDATA*.

Wirastri, T. D., & Van Huis, S. C. (2021). The second wife: Ambivalences towards state regulation of polygamy in Indonesia. *The Journal of Legal Pluralism and Unofficial Law*, *53*(2), 246–268.

Wiwin, W., Darwis, M., & Syam, E. Z. (2023). *Telaah Kritis Pemberian Izin Poligami dengan Alasan Sering Ditinggal Istri (Studi Putusan Nomor 28/Pdt. G/2021/PA. Ek)*.

Woodman, G. R. (1996). Legal pluralism and the search for justice. *Journal of African Law*, *40*(2), 152–167.