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Hacking the Polyandry Taboo: The Struggle for Law, Tradition, and Human Rights in Indonesia

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Abstract

This study aims to examine the legal challenges that affect the practice of polyandry in Indonesia and how traditional views influence the implementation of law and human rights. This study employs normative juridical legal research with a qualitative approach, collecting data through a literature review, legal document analysis, and qualitative interviews to gain a comprehensive understanding. The data were then analyzed thematically and comparatively. Some traditional views perceive polyandry as a form of gender equality, referring to Article 27, paragraph (1) of the Human Rights Law. This perspective has sparked public opinion suggesting that if men can have multiple wives, then women should also be allowed to have multiple husbands. However, this practice presents legal challenges, including non-compliance with existing laws, clashes between legal norms and traditional values, and resistance from patriarchal culture. These issues contribute to the broader debate on the intersection of gender equality, cultural norms, and legal frameworks. On one hand, traditional perspectives promote polyandry as individual autonomy and gender fairness in marriage. On the other hand, the state holds the authority to limit certain rights, especially in marriage practices deemed unconventional, such as polyandry, to prevent misuse of personal freedoms, protect women from potential harm, and ensure the clarity of lineage and family structure.

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Introduction

Marriage is an act arranged by God Almighty to ensure the continuity of the development of His creatures. The creation of this universe, including humans, often involves pairs or pairs of entities. Humans, as God's creation, are formed into two different genders, namely male and female.¹ Marriage plays a significant role in human life, both for individuals and society as a whole. Through legal marriage, the relationship between a man and a woman can be established in a respectful manner, befitting civilized human beings. Humans, as beings with high personalities, are capable of building a domestic relationship based on an atmosphere of peace, tranquility, and deep love between husband and wife.²

¹ JM Henn Wiludjeng, *Hukum Perkawinan Dalam Agama* (Universitas Katolik Indonesia Atma Jaya 2020).

² Tinuk Dwi Cahyani, *Hukum Perkawinan* (UMM Press 2020) 2.

In Islam, marriage is seen as a worship of Allah SWT, who follows the example and teachings given by the Prophet Muhammad SAW. In addition, marriage also embodies essential human values, such as fulfilling human life instincts to preserve offspring, promoting peace in life, and fostering affection within family and community life.

Law Number 16 of 2019 concerning marriage has regulated the basic principles of marriage, which clearly outlines the principle of monogamy as affirmed in Article 3, paragraph (1), namely that a husband can only have one wife at a time.³ However, Article 3, paragraph (2) also provides an opportunity for a husband to practice polygamy with certain conditions and permission from the court, if desired by the parties concerned.⁴ This is in line with the teachings in Islam that allow polygamy with strict conditions. Although polygamy is allowed in Islam, it must be done fairly to all wives, and if the husband is unable to act reasonably, then it is advisable to have only one wife. However, it should be noted that, conversely, polyandry or a wife having multiple husbands is not allowed either in Indonesian law or in Islamic teachings.

Polyandry is where a woman has multiple husbands, which is not allowed in Indonesian law or in Islamic teachings. Indonesia, as a country with a majority of its population adhering to Islam, has regulated marriage based on Islamic principles. In Islam, marriage is an agreement between a man and a woman that is regulated by strict provisions regarding the roles and responsibilities that each partner must carry. In the village of Ayula, polyandry occurs because some women choose to marry additional husbands without formally divorcing their first husbands, often due to the absence or inability of the first husband to provide financial support, making polyandry a strategy to secure economic assistance and maintain household stability.

The concept of polyandry does not conform to these principles, as it can create ambiguity regarding heredity, responsibilities, and inheritance rights. The prohibition of polyandry marriage is expressly regulated in Article 40, paragraph (a) of the Compilation

³ Edy Mulyanto, 'Azas Monogami Dan Azas Poligini Dalam Sistem Hukum Perkawinan Di Indonesia Beserta Sanksi Terhadap Pelanggarannya' (2022) 5 Pamulang Law Review 109.

⁴ Muhamad Arif Mustofa, 'Poligami Dalam Hukum Agama Dan Negara' (2017) 2 Al-Imarah: Jurnal Pemerintahan dan Politik Islam 47.

of Islamic Law, which states that married women are not allowed to marry other men.⁵ In other words, in Islamic law, the practice of polyandry is prohibited and considered a violation of the law.

Although the Marriage Law and Islamic law expressly reject the practice of polyandry, the reality is that there are still problems related to polyandry. The factors that affect the occurrence of polyandry in this society vary significantly, from an economic and social perspective. *The first factor*, Financial inability, is often the main driver behind polyandry practices. Some women are limited in access to jobs that generate enough income to support their families. In this situation, polyandry is considered a solution to maintain the family's economic well-being. They believe that having more than one husband will lead to more economic resources, especially if the husbands are willing to provide financial support. *The second factor is the* traditional view that stems from the community's common understanding of marriage. This view sees marriage as a personal matter and the prerogative of each individual that should not be interfered with by any party; in this context, people tend to view marriage as a private and personal affair. The prerogative of individuals in choosing their form of marriage is considered a fundamental aspect that should not be interfered with by the norms or regulations of any party. This view reflects a belief in the freedom of individuals to live a married life according to their personal choices and values.

The incompatibility between the social norms that favor polyandry and the legal norms that stipulate free consent in marriage creates a conflict between traditional values that emphasize the prerogative of the individual and the law of marriage in Indonesia. This view is further complicated by the emergence of a common assumption that polyandry as a form of gender equality arises from the interpretation of Article 27, paragraph (1) concerning Human Rights.⁶ Some people argue that if a man is allowed to have more than one wife, then a woman can also have more than one husband. This dilemma creates a condition where the traditional view that ignores the legal prohibition on the

⁵ Kementerian Agama RI, *Kompilasi Hukum Islam Indonesia* (2018).

⁶ Ranga Prayitno Rita Faura, 'Kesadaran Masyarakat Dalam Melaksanakan Perkawinan Ke Dua Setelah Perceraian Berdasarkan Putusan Pengadilan Di Pasaman Barat' (2023) 3 *Ekasakti Jurnal Penelitian dan Pengabdian* (EJPP) 53.

practice of polyandry strengthens the prerogative, especially for women, in choosing their life partners. Although the principle of monogamy is maintained in marriage law, the meaning of “free choice of partner” affirms the importance of gender equality and individual rights. But keep in mind that this principle is directed at countering the practice of forced marriage and allowing individuals to choose their life partner, not to facilitate polyandry marriages.

Polyandry is an act that is prohibited by religion and law because it triggers a serious risk to women’s rights.⁷ This practice is detrimental to women, with the potential for exploitation and the violation of their fundamental rights. In essence, polyandry is regarded as a form of human rights violation, as it degrades human dignity, particularly that of women who may become trapped in circumstances that contravene both religious and legal norms, and which foster gender inequality. As a controversial phenomenon, polyandry necessitates heightened awareness and a firm legal and societal response to safeguard women’s rights and ensure family welfare. Based on the aforementioned legal issue, the author formulates two primary research questions: legal challenges influence the practice of polyandry in Indonesia, and how do traditional views affect the implementation of law and human rights in the context of polyandry? Although the study by Ilham Novriyadi, Saipuddin Zahri, and Suatmiati Suatmiati (2024) has examined polyandry in the context of social and cultural practices, their focus was primarily on positive law aspects, particularly the limitations of regulations and sanctions regarding polyandry marriages, including unregistered marriages, rather than on the legal challenges and human rights implications addressed in this study. This study is expected to make a meaningful contribution to academic and legal discourse, particularly by addressing the imbalance between traditional perspectives and legal norms that often disadvantage women. By exploring the argument that polyandry can be understood within the framework of gender equality, this research aims to promote a paradigm shift, viewing polyandry not solely as a violation of religious and legal norms but also as a gender equality issue whose associated rights warrant recognition and protection.

⁷ A Ja’far, ‘Larangan Muslimah Poliandri: Kajian Filosofis, Normatif Yuridis, Psikologis, Dan Sosiologis.’ (2012) 10 *Al-’Adalah* 325.

Research Method

This study employs normative juridical legal research with a qualitative approach, emphasizing the analysis of written legal norms in legislation, such as the Marriage Law and the Compilation of Islamic Law, while also considering the social and cultural contexts that influence the practice of polyandry. Data were collected through literature review, legal document analysis, and qualitative interviews to obtain a comprehensive understanding of polyandry practices. The data were then analyzed thematically and comparatively to assess the conformity of polyandry practices with the law, the protection of women's rights, and legal certainty for children. This approach is relevant as it explains the interaction between law, tradition, and human rights, while providing a basis for gender sensitive legal policy recommendations that take the social and cultural context into account.

Legal Challenges to Polyandry Practices in Indonesia

In Indonesia, marriage arrangements are contained in Law Number 16 of 2019 concerning marriage. This law fundamentally follows the principle of monogamy, where a man can have only one wife and a woman can have only one husband, as explained in Article 3, paragraph (1) of the Marriage Law.⁸ This provision is strengthened by Article 9 of Law Number 16 of 2019 on Marriage, which stipulates that a person who is still bound in marriage with another person may not remarry, except in certain situations that have been regulated in Article 3 paragraph (2) and Article 4 of the Marriage Law.⁹ Furthermore, the conditions for marriage in Indonesia include the provision that an individual who is still bound by marriage with another person, whether they live together or have separated, is still considered bound in a marriage, unless they first divorce from the previous spouse as stipulated in Government Regulation Number 9 of 1975 on the Implementation of the Marriage Law.¹⁰

⁸ Rita Faura (n 6).

⁹ Herni Widanarti, 'Implementasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Terhadap Hukum Perkawinan Di Indonesia' (2020) 3 Law, Development and Justice Review 121.

¹⁰ Muchimah Muchimah, 'Pelaksanaan Peraturan Pemerintah No. 9 Tahun 1975 Dalam Perspektif Sosiologi Dan Antropologi Hukum Islam' (2018) 1 Volksgeist: Jurnal Ilmu Hukum dan Konstitusi 157.

This indicates that a woman who has been legally married to a husband from a previous marriage cannot marry another man without first undergoing the divorce process in accordance with applicable legal provisions. The principle of monogamy in marriage law in Indonesia is crucial and serves the purpose of maintaining and protecting the rights and interests of married couples. This principle affirms that marriage is a legal union between one man and one woman, and that each spouse must adhere to this principle. This principle serves as the legal basis for regulating the marriage of couples with each other in their marital bond. This principle not only encompasses legal aspects but also reflects strong social, cultural, and religious values in society that help maintain stability and order within the institution of marriage, guiding individuals who are legally married.¹¹

This practice is clearly contrary to the principle of monogamy and the provisions of the marriage law in Indonesia. Terminologically, polyandry refers to the practice of marriage in which a woman has several husbands simultaneously, which comes from the Greek words "*polus*" meaning many, "*Aner*" meaning negative, and "*andros*" meaning man. In the context of society, this practice of polygamy, where a man has more than one wife, is more common than polyandry. Ali Husein Hakim explained polyandry as a condition where women have more than one husband. Thus, it refers to the form of the marriage system in which a woman has more than one husband at the same time.¹²

The principle of monogamy in Indonesian marriage law is not only a rule of law.¹³ It is also a strong representation of the social, cultural, and religious values that underlie Indonesian society. This principle has been recognized and firmly established in society for many years, reflecting the view on the position and rights of a couple in a legally valid marriage. These values have become an integral part of Indonesia's social and cultural structure, underscoring the importance of loyalty, commitment, and attachment in the marriage bond. Thus, polyandry, as a practice of marriage in which a woman has more than one husband at the same time, is considered a serious violation of the principles of monogamy and the values that have taken root in society.

¹¹ Abdul Hamid Firdaus Renaut, Asman, 'Hukum Keluarga' (Get Press Indonesia, 2022) 39.

¹² Misran and Muza Agustina, 'Faktor-Faktor Terjadinya Poliandri Di Masyarakat (Studi Kasus Di Kabupaten Pidie Jaya)' (2017) 1 Samarah 248.

¹³ Mulyanto (n 3).

In addition to violating the principle of monogamy, polyandry also creates ambiguity in terms of rights and responsibilities for the offspring of the marriage. The presence of more than one father in a family can be confusing in terms of determining the rights and obligations of these fathers to children, especially regarding inheritance rights and the fulfillment of children's needs. This creates very complicated situations and potential conflicts within the family that adversely affect the well-being of children.

The practice of polyandry raises complex legal issues. Since this practice contravenes the applicable marriage laws, its implementation can result in serious legal consequences. Additionally, the emergence of conflicts between social norms and legal norms can create legal uncertainty, thereby hindering law enforcement. Along with that, polyandry is clearly not recognized as a legal form of marriage in Indonesia. It is not in accordance with the principles of monogamy and social, cultural, and religious values embraced by Indonesian society. Although this practice is prohibited, it is still prevalent in society.

The fact that the practice of polyandry continues in some communities in Indonesia illustrates how complicated efforts to control this phenomenon are. Although polyandry is clearly not recognized as a legal form of marriage in Indonesia and is not in line with the principles of monogamy and social values embraced by Indonesian society, there are still some people who practice it. The emergence of legal challenges is one of the elements that adds complexity in controlling polyandry practices. Some of the legal challenges faced include:

a. Legal Non-Compliance

Effective law enforcement in the context of polyandry is a serious challenge, especially in a country that adheres to the principle of monogamy, such as Indonesia. Polyandry, which involves a woman having several husbands at the same time, is often against the country's prevailing marriage laws.¹⁴ The non-compliance of polyandry perpetrators with existing marriage laws creates obstacles in law enforcement efforts.

¹⁴ Brendah Pua, Deicy N Karamoy and Mercy M M.Setlight, 'Kedudukan Asas Monogami Dalam Pengaturan Hukum Perkawinan Di Indonesia' (2022) 9 NUSANTARA: Jurnal Ilmu Pengetahuan Sosial 2373.

This is complicated by the fact that polyandry perpetrators often choose not to comply with the law or even not officially register additional marriages.

One of the main problems in law enforcement related to polyandry is the lack of formal reporting associated with this practice. Polyandry often occurs in situations that tend to be closed and full of secrecy. Polyandry perpetrators, in their efforts to maintain secrecy, do not formally register additional marriages, and there are often no legal records documenting this practice. In some cases, this lack of reporting can be attributed to fear or social pressure on witnesses who are aware of the practice, thereby hindering investigations and law enforcement. Witnesses who were mindful of this practice feared the consequences of testifying. Witnesses who know about the practice of polyandry often refrain from reporting it to the authorities, and this is due to factors such as fear and social pressure.

The fear felt by witnesses related to the practice of polyandry has a profound impact on law enforcement efforts. Threats to personal safety and well-being are the reasons they are reluctant to testify or report the practice. These threats include potential physical violence, social exclusion, and so on. In some cases, witnesses fear retaliation from polyandry perpetrators who create insecurity.

In addition, the social pressure felt by witnesses when giving this testimony is due to the fear of stigmatization or discrimination that accompanies actions that have an impact on their psychological and emotional well-being. This pressure reluctantly discouraged witnesses from reporting polyandry practices, which ultimately complicated law enforcement efforts. Fear of retaliation from polyandry perpetrators and insecurity related to the social consequences that occur make many individuals who are aware of this practice choose to keep it a secret. As a result, reporting of polyandry practices has become rare, and law enforcement is challenging to implement optimally.

b. Conflict Between Law and Traditional Views

The disagreement between law and cultural values regarding polyandry reflects significant differences in the way societies and states view the institution of marriage and human rights. Polyandry, which is a term for a type of marriage in which a woman

marries several men simultaneously, is a concrete example of the tension that arises from the existing traditional views and legal regulations that apply in Indonesia.

From a philosophical perspective, polyandry is seen as a forbidden form of marriage and is contrary to the view of women's nature, where a woman has several husbands at the same time, is incompatible with the principle of equality and balance in the marital relationship, and can create an imbalance of power in the marriage relationship, sacrificing women's rights. In a normative view, the law of polyandry is often considered haram in the context of Islam. This is based on the postulates of the Quran, as Allah SWT says:

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ

"And (it is also forbidden for you to marry) a married woman, except for the female slave (prisoner of war) that you have." (Qs. An-Nisa verse 24).

In addition, it also refers to the Hadith contained in the narration of Ahmad, which explains that polyandry is considered adultery, whose law is haram because it is deemed contrary to human nature.¹⁵ Islam expressly supports monogamy and prohibits polyandry, viewing monogamy as a principle that is in accordance with the religious and moral values adhered to. This is also emphasized in Article 40(a) of the KHI, which explains the prohibition on implementing marriage between a man and a woman in a situation where the woman is still bound in a marital relationship with another man.¹⁶ Meanwhile, from a juridical perspective, the practice of polyandry is considered to violate Article 3 paragraph (1) of the Marriage Law, which expressly states that a wife is only allowed to marry one husband, which describes the principle of monogamy in the marriage law.¹⁷

Polyandry is an act that is included in the criminal acts regulated in Article 279, paragraph (1), of the Criminal Code (KUHP). This article states that a person will be

¹⁵ Akbar Nur Aziz and others, 'Poliandri Drupadi Dalam Perspektif Psikologi Islam' (2023) 14 *Al-Qalb : Jurnal Psikologi Islam* 16 <<https://ejournal.uinib.ac.id/jurnal/index.php/alqalb/article/view/4813/3181>>.

¹⁶ Novita Lestari, 'Problematika Hukum Perkawinan Di Indonesia' (2018) 4 *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*.

¹⁷ Arie Kartika Rafiqi1, 'Kepastian Hukum Perkawinan Poliandri Di Indonesia' (2023) 2 *Hukum In Concreto* 45 <<https://ejournal.uhb.ac.id/index.php/inconcreto/article/download/1014/628>>.

sentenced to imprisonment for a maximum of five years if they marry, while they are known to have an existing marriage that is a valid obstacle to them remarrying.¹⁸

The ban on polyandry in Indonesia is not without a strong reason. One of the reasons is to maintain the purity of the offspring and ensure that children born in wedlock have legal certainty regarding their offspring. In the context of monogamy, offspring born within marriage have a clear legal status and are recognized as legitimate children of both parents. Polyandry raises ambiguities regarding the origin of children, which becomes a complex problem that can affect children's rights.

In addition, the prohibition of polyandry also reflects an extreme view of social norms and underlies the marriage law in Indonesia. Indonesian society broadly adheres to the principle of monogamy, as reflected in its long-standing social and cultural norms. The practice of polyandry is considered a violation of social norms that have been established, and this creates pressure for the state's laws to remain in accordance with the views and values firmly held by society.

The distinction between law and cultural values related to the practice of polyandry reflects the conflict that arises when traditional views are rooted in cultural values as opposed to laws that reflect modern social norms. This conventional view regards the practice of polyandry as an unlimited prerogative for women and stems from old beliefs that are difficult to change in society. This view arises as a result of an interpretation based on Article 27, paragraph (1) on Human Rights,¹⁹ which affirms the equal position of women and men before the law.²⁰

Conflict arises when modern laws, which reflect more contemporary social norms and support the principle of gender equality, are opposed to traditional views. The prohibition of polyandry in marriage law creates tension with cultural values that are

¹⁸ Martinus, 'Penegakkan Hukum Terhadap Tindak Pidana Poliandri (Suatu Penelitian Di Wilayah Hukum Kepolisian Resor Aceh Jaya) THE LAW ENFORCEMENT AGAINST POLYANDRY CRIMES (The Research in the Jurisdiction of Aceh Jaya Police Resort) PENDAHULUAN Dalam Syariat Islam' (2022) 6 Jurnal Ilmia Mahasiswa Bidang Hukum Pidana 87.

¹⁹ Wiwik Afifah, 'Hukum Dan Konstitusi: Perlindungan Hukum Atas Diskriminasi Pada Hak Asasi Perempuan Di Dalam Konstitusi' (2018) 13 DiH: Jurnal Ilmu Hukum 201.

²⁰ Asniah, Yeni Huriani and Eni Zulaiha, 'Kesetaraan Gender Dalam Perspektif Hukum Islam' (2023) Vol. 13 The Indonesian Journal of Islamic Law and Civil Law 23.

still strong in society. On the one hand,²¹ there is an intense pressure to accommodate individual rights, especially those related to women's rights, and ensure that the principle of gender equality is respected. Gender equality is a fundamental principle in human rights that aims to eliminate all forms of discrimination based on sex. In the context of marriage law, this means ensuring that all parties, both men and women, have equal rights and responsibilities to choose a life partner and live a fair and equitable marriage.

On the other hand, the traditional view of polyandry reflects the diverse interpretations of individual prerogative that have long been entrenched in society. Some people see the practice of polyandry as a form of personal freedom, especially for women in the context of marriage law. From this perspective, women have the right to choose with whom they want to marry, and this decision is considered a part of personal freedom that should not be interfered with by any party, including the state or society. This view is grounded in the belief that the choice of a life partner is an individual decision of a highly personal nature, so that every individual has the full right to organize their marital life according to their own values and desires. However, this argument presents a serious dilemma when confronted with positive legal norms and socio-cultural traditions that reject the existence of polyandry. Therefore, the discourse on polyandry must be placed within an analytical framework that balances respect for human rights, the preservation of tradition, and legal certainty, while emphasizing that recognition of individual freedom can only be granted within certain limits without leading to the legalization of polyandry, which is contrary to existing law and cultural values.

c. Patriarchal Culture

The patriarchal culture that is still firmly attached to some societies is a factor in encouraging polyandry practices, especially in the context of economic problems. Patriarchy is a social system in which men occupy the central authority role in the social structure. Men's positions tend to be more dominant than women's in various

²¹ K Herry Christian, J., Edenela, 'The Deprivation of Women's Rights Due to Discrimination on the Marriage Age Limit' (2019) 3 *Lex Scientia Law Review* 1.

aspects of social, cultural, and economic life.²² This emphasizes the dominant role of men as the head of the family who has the primary responsibility for earning a living for the entire family. In societies that adhere to strong patriarchal views, a man's success and social status are often measured by his ability to provide for or meet the economic needs of his family.²³ However, when the first husband fails to provide adequate financial support, women often feel trapped in difficult economic situations. In the patriarchal view, women's economic options are usually limited by their limited access to education, training, and employment on par with men. Therefore, polyandry is considered a rational economic solution.

In some societies that still hold a strong patriarchal culture, divorce is often considered an act of disrespect and can potentially create negative stigma for women.²⁴ This social pressure may make women reluctant to seek divorce, even when facing serious economic problems. In this context, polyandry is seen as a socially acceptable alternative, allowing women to gain more control over their income and economic independence, reducing reliance on first husbands who cannot provide adequate support. In the Ayula Village,²⁵ this dynamic is evident, as some women practicing polyandry choose to marry additional husbands without formally divorcing their first husbands, often due to the absence or inability of the first husband to provide financial support. This practice is a direct response to the limitations imposed by patriarchal expectations, serving as a strategy to secure economic assistance and maintain household stability.

Traditional views influence the implementation of law and human rights in the practice of polyandry.

Polyandry and polygamy are the practices of marriage involving more than one partner, but there are significant differences in the gender context. Polygamy is when a

²² Israpil Israpil, 'Budaya Patriarki Dan Kekerasan Terhadap Perempuan (Sejarah Dan Perkembangannya)' (2017) 5 Pusaka 141.

²³ Pilar Goñalons-Pons & Markus Gangl, 'Marriage and Masculinity: Male-Breadwinner Culture, Unemployment, and Separation Risk in 29 Countries.' (2021) 86 American Sociological Review 465.

²⁴ Ade Irma and Dessy Hasanah, 'Menyoroti Budaya Patriarki Di Indonesia' (2019) 7 Social Work Jurnal 1.

²⁵ Wawancara ZD, Pelaku Perkawinan Poliandri, Tanggal 18 Mei 2024, Desa Ayula

man has more than one wife at the same time, and this is allowed in Islamic law with certain conditions. On the other hand, polyandry is when a woman has more than one husband at the same time. In contrast to polygamy, both national law and Islamic law prohibit the practice of polyandry. This is because the practice of polyandry is very detrimental to women and their descendants.

In Indonesia, marital relations are regulated in Law Number 16 of 2019 concerning Marriage (Marriage Law) and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Dissemination of Compilation of Islamic Law (KHI).²⁶ Both of these rules are based on the principle of monogamy, which affirms that an individual, regardless of gender, can have only one legal partner.²⁷ This principle reflects the social and cultural values that underlie the family structure in Indonesia, where fidelity and commitment in marriage are essential foundations. Thus, monogamy is the primary basis for regulating marital relationships, intending to promote family stability and healthy husband-wife relationships.

The importance of women's human rights in Indonesia is reflected in the 1945 Constitution of the Republic of Indonesia.²⁸ Jimly Asshiddiqie explained that constitutional rights guaranteed by the Constitution are not always synonymous with human rights.²⁹ Constitutional rights are rights that apply only to citizens and may not encompass the broader concept of human rights.³⁰ However, the concept of human rights has been fully incorporated into the constitution, linking human rights with those of citizens.

The legal protection of women in Indonesia refers to the 1945 Constitution (1945 Constitution), which generally states the principle of equality between men and women. Legal protection for women comprises two main components: preventive efforts and

²⁶ Aisyah Ayu Musyafah, 'Perkawinan Dalam Perspektif Filosofis Hukum Islam' (2020) 2 *Crepido* 111.

²⁷ Syamsud Dhuha, 'Tafsir Asas Monogami Dalam Surah An-Nisā Ayat 3 Dan 129' (2021) 3 no 1 *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)* 101-15, <https://doi.org/10.33474/jas.v3i1.11047>.

²⁸ Ravita Mega Saputri and Alil Rinenggo, 'Pengaturan Hak Asasi Manusia Bagi Perempuan Indonesia Pasca Amandemen UUD 1945' (2023) 11 *WASPADA (Jurnal Wawasan Pengembangan Pendidikan)* 50.

²⁹ Bisariyadi Bisariyadi, 'Menyibak Hak Konstitusional Yang Tersembunyi' (2017) 24 *Jurnal Hukum Ius Quia Iustum* 509.

³⁰ Fadhilatul Husni, 'Kebebasan Berekspresi Dan Hak Konstitusional Warga Negara Perspektif Siyasah Dusturiyah' (2020) 36 *Ijtihad* 75.

response mechanisms.³¹ It is essential to emphasize that women's human rights must be clearly enshrined in the 1945 Constitution as a preventive measure, with more detailed regulations outlined in the subsequent legislation.³² While this journey may take a long time, consistency in this effort is key to ensuring the protection of women's rights both in prevention and addressing issues related to women's rights.

Women's right to equality before the law is recognized in Article 28D of the 1945 Constitution, which affirms that every individual has the right to obtain recognition, guarantees, protection, and legal certainty in a fair and equal manner before the law.³³ The use of the phrase "every individual" reflects the principle of equality that applies to both men and women, which affirms that there should be no discrimination based on gender. This is in line with Article 27 paragraph (1), which stipulates that all citizens have equal standing in law and government and support gender equality in the country.³⁴ In Ayula Village, Tapa District,³⁵ Gorontalo, polyandry persists as women abandoned without financial support often remarry, sometimes while their previous marriages remain legally intact. This pragmatic response to socio-economic vulnerability sharply contrasts with statutory and Islamic law, which categorically prohibit polyandry, exposing a structural gap between lived realities and rigid legal norms.

Recently, there has been a traditional view that has emerged among people (especially for women) who consider polyandry as a form of gender equality. Traditional views can be interpreted as the public view of people who do not understand the standard legal rules.³⁶ They argue that in an effort to achieve equality between men and women, it is essential for society to accept various forms of marital relationships, including

³¹ Margaretha Rumbekwan and Nini Adelina Tanamal, 'Peran Perempuan Dalam Ketahanan Nasional' (2023) 48 Jurnal Ilmu Pemerintahan Widya Praja 203.

³² Rochaety Nur, 'Menegakkan Ham Melalui Perlindungan Hukum Bagi Perempuan Korban Kekerasan Di Indonesia' (2019) 7, No.1 Palastren 1 <<https://journal.iainkudus.ac.id/index.php/Palastren/article/view/996>>.

³³ Ibnu Alwaton Surya Waliden, Selvia Fitri Maulida and Mochammad Agus Rachmatulloh, 'Tinjauan Asas Equality Before the Law Terhadap Penegakan Hukum Di Indonesia' (2022) 1 Verfassung: Jurnal Hukum Tata Negara 123.

³⁴ Rita Faura, *Op.Cit.*

³⁵ Wawancara dengan SA, Tanggal 14 Mei 2024 di Desa Ayula Gorontalo.

³⁶ Hasliza Lubis, 'Poliandri Di Kalangan Masyarakat Muslim: Studi Sosiologis Di Kelurahan Bunut Kecamatan Kisaran Barat Kabupaten Asahan' (2020) 5 Al-Istinbath: Jurnal Hukum Islam 1.

polyandry. This view developed in conjunction with the interpretation of Article 27, Paragraph (1) of the 1945 Constitution, which states that there is equality between men and women before the law.³⁷ This interpretation can encourage the view that if men are allowed to practice polygamy (marrying more than one wife), then women should also be given the same right to practice polyandry (marrying more than one husband) for gender balance to be realized.

The concept of the family that is the focus of this view emphasizes the principle that each individual should have the prerogative to decide with whom they want to live a married life. It is not only a matter of rights, but also of the freedom of individuals to extend their marital relationship according to their personal desires and values. In this view, individual autonomy is the key that allows a person to make the marriage choice that best suits their goals without any pressure or intervention from outside parties.

This view affirms that decisions about marriage should stem from pure free will. This means that individuals, especially women, have the ability to make decisions without any element of coercion from family, society, or rigid social norms. Freedom in choosing a life partner is at the essence of this view, which gives individuals, especially women, greater control over their marital life.

Free choice in deciding on marriage is a central concept that strengthens women's position in this view. By making individual preferences the basis for marriage decisions, this view gives women the freedom to stretch and shape the marital relationship that best suits their values, desires, and goals.³⁸ This is an essential step in strengthening women's role in controlling their marital lives as well as giving them greater control over their fate in the context of diverse matrimonial relationships.

In an increasingly inclusive society, this view advocates for a more inclusive definition of marriage, recognizing that there is no one-size-fits-all approach to marriage. It depicts every individual, regardless of gender, as having the right to pursue a marital

³⁷ Hernadi Affandi, 'Kontekstualitas Makna "Bersamaan Kedudukan" Di Dalam Hukum Dan Pemerintahan Menurut Undang-Undang Dasar 1945' (2017) 4 PADJADJARAN Jurnal Ilmu Hukum (Journal of Law) 19.

³⁸ Muhammad Yusuf, 'Women's Rights in Marriage and Divorce in Contemporary Islamic Thought' (2020) 22 Journal of Islamic Law and Culture 123.

relationship that aligns with their personal values and beliefs.³⁹ This effort reflects a significant step in supporting gender equality and individual prerogatives in choosing life partners, in line with evolving social changes and shifting societal perspectives.

This view gives rise to two opposing sides of the debate. On the one hand, proponents of this view argue that such a change could provide an advantage in terms of individual autonomy, especially for women, who can choose a life partner and form a marriage that aligns with their personal values and beliefs.⁴⁰ This can strengthen an individual's prerogative and provide more freedom in managing their marital life. On the other hand, the recognition of the practice of polyandry in the institution of marriage can create conflicts with the social, cultural, and religious norms that have been an integral part of society for many years. Traditional values that have long been associated with marriage often contradict this view.⁴¹ Recognition of polyandry has the potential to spark resistance or disagreement to this kind of change. In addition, debates about complex social and legal implications can result in changes in terms of rights and obligations, property division, and legal responsibilities towards children in the context of polyandry marriages. In the Tapa District, religious leaders and the Gorontalo Religious Court⁴² unequivocally reject polyandry under both Islamic and statutory law, as exemplified in *itsbat nikah* case No. 255/Pdt.P/2022/PA.Gtlo, where a marriage involving a woman still bound by a previous union was denied legal recognition. Yet, socio-economic pressures compel some women to remarry despite legal prohibitions, exposing a stark gap between lived realities and rigid legal norms.

In addition, the concept of gender equality in traditional views often receives less recognition than in more modern views and positive laws. This is due to long-established social values and norms that tend to maintain traditionally divided gender

³⁹ L Scott, J., & Bennett, 'From Nuclear to Diverse: Shifting Conceptualisations of Marriage among Australia's 1960s Generation A Qualitative Study' (2021) 13 Societies 433.

⁴⁰ Wahyuni Mayangsari, Franciscus Adi Prasetyo and Kusuma Wulandari, 'Otonomi Perempuan Dalam Mengambil Keputusan Menikah Kembali Pasca Perceraian Akibat Pernikahan Dini' (2022) 5 Journal of Urban Sociology 4.

⁴¹ A Fadiman, 'Cultural Conflicts and Gender Roles in Marriage Institutions: A Comparative Perspective' (2019) 50 Journal of Comparative Family Studies 147.

⁴² Wawancara Syafrudin Mohamad Selaku Hakim Pengadilan Agama Gorontalo, 12 Juni 2024, Gorontalo.

roles.⁴³ Although in this view, the importance of combating gender discrimination and providing equal access to individuals in making decisions regarding marriage is emphasized, there are often differences in the interpretation and implementation of the concept of gender equality. This creates a conflict that arises between traditional views and more progressive views in society.

Differences in views on gender equality in society often trigger significant shifts in values and social changes. Society is an ever-changing environment, and diverse views on individual gender roles, rights, and obligations have had a profound impact on social and cultural evolution.⁴⁴ Traditional views of gender equality are often based on social values and norms that have prevailed for centuries.⁴⁵ Gender roles are typically defined in a rigid manner, where men and women are assigned roles based on tradition.⁴⁶

Gender equality in the context of human rights is a fundamental principle that emphasizes the protection and respect of women's rights,⁴⁷ particularly in the context of marriage. Every individual, regardless of gender, has a prerogative recognized by human rights.⁴⁸ This includes women's rights, which encompass their freedom and autonomy in matters of marriage and family.⁴⁹ However, it is essential to recognize that although women have these rights in certain situations, the state can limit the fulfillment of these rights. These restrictions are implemented to prevent the abuse of individual prerogatives in traditional views.

There are special situations in which states can restrict human rights, such as those related to rights that can be categorized as "derogable rights." These include

⁴³ Zulham Wahyudani and others, 'Dismantling the Patriarchal Culture and Optimizing Gender Equality in Marriage Law' (2023) 4 16.

⁴⁴ Mujahidah Mujahidah, 'Dinamika Gender Dan Peran Perempuan Dalam Ekonomi Keluarga' (2010) 10 *Al-Ulum: Jurnal Studi Islam* 1.

⁴⁵ A Khoirunnisa, 'Dinamika Feminisme Dan Perubahan Sosial' (2024) 2 *Jurnal Media Akademik* 1.

⁴⁶ Solikul Hadi, 'Bias Gender Dalam Konstruksi Hukum Islam Di Indonesia' (2014) 7 *Palastren* 25.

⁴⁷ N Lalah Alawiyah and Muhammad Sholeh Hasan, 'Hak Asasi Manusia Di Dunia Islam: Isu Tentang Hak Perempuan' (2022) 6 *Jurnal Kewarganegaraan* 4142.

⁴⁸ Taufikurrahman and Dina In'am Nurida, 'Nilai Hak Asasi Manusia Di Indonesia Dalam Perspektif Islam' (2023) 6 *Al-Mada : Jurnal Agama, Sosial, dan Budaya* 455 <<https://www.e-journal.ikhac.ac.id/index.php/almada/article/view/3552>>.

⁴⁹ La Ode Muhammad Saleh Saputra and Jumiati Ukkas, 'Pelaksanaan Hak-Hak Keperdataan Wanita Yang Menikah Di Bawah Umur' (2024) 6 *Halu Oleo Legal Research* 183 <<https://journal.uho.ac.id/index.php/holresch/article/view/814>>.

the right to express opinions, the right to move, the right to assemble, and the right to speak⁵⁰ Especially in the context of polyandry, which is considered an unusual form of marriage. The limitation of these rights can be based on the marriage law, which expressly stipulates that a man may only have one wife and a woman may only have one husband, as specified in Article 3, Paragraph (1) of the marriage law. The prohibition of polyandry is regulated in Article 40 of the KHI, which affirms that a man is prohibited from marrying a woman who is still bound by a marriage with another man (*al-muhshanat*).⁵¹ In general, polyandry in Indonesia is regarded as an invalid marriage and contradicts Law Number 16 of 2019 concerning Marriage as well as the Compilation of Islamic Law, particularly Articles 40 and 71. Meanwhile, in Malaysia, the practice of polyandry is also prohibited under the Islamic Family Law (Federal Territories) Act 1984 (IFL Act 1984), which stipulates that a woman may not marry another man while still bound by a marriage. Thus, both Indonesia and Malaysia effectively close the possibility of legalizing polyandry.

The consequence of this rule is that a woman who wants to marry another man must have the status of a single woman or a widow who has completed her iddah period. If the marriage does not meet the provisions of Article 40 of the KHI, it can be annulled based on Article 71, letters b and c of the KHI.⁵² If the woman wishes to remarry, she must be divorced by her husband or have the husband sue for divorce (Article 114 of the KHI) for the reasons stated in Article 116 of the KHI.⁵³

This strict regulation aims to place restrictions on the exercise of prerogatives, especially for women, whose purpose is to prevent the abuse of individual prerogatives⁵⁴ in the context of marriage. Such restrictions on human rights are intended to provide

⁵⁰ Osgar S. Matompo, 'Pembatasan Hak Asasi Manusia' (2014) 21 Jurnal Media Hukum 1.

⁵¹ Op.Cit, Ayunda Rizkiya, 164.

⁵² SNMA Hudodo, N M Kasim, and ..., "Akibat Hukum Dari Perkawinan Polandri Di Pengadilan Agama Gorontalo," : *Jurnal Publikasi Ilmu* 1, no. 4 (2023), <https://journal.widyakarya.ac.id/index.php/Depositi-widyakarya/article/view/2001>.

⁵³ Arifin Abdullah, 'Sebab-Sebab Terjadinya Perceraian Dan Dampaknya Terhadap Perempuan Di Aceh (Analisis Perbandingan Putusan Mahkamah Syar'iyah Meulaboh Aceh Barat Dan Mahkamah Syar'iyah Jantho Aceh Besar Tahun 2019-2021)' (2023) 12 Takammul: Jurnal Studi Gender dan Islam Serta Perlindungan Anak 10.

⁵⁴ Mei Susanto, 'Perkembangan Pemaknaan Hak Prerogatif Presiden' (2016) 9 Jurnal Yudisial 251.

protection and certainty for women's rights.⁵⁵ This is because if polyandry marriage is not strictly regulated or restricted, consequences will arise that include several things in the form of rights and responsibilities to the descendants of the marriage. The presence of more than one father in a family can create confusion in determining the rights and obligations of fathers to their children, especially regarding inheritance rights and fulfilling children's needs. This creates a complex situation and has the potential to trigger conflicts within the family that can have a negative impact on children's well-being. Therefore, these restrictions are expected to maintain clarity in family and descendant affairs.

In principle, laws and regulations related to marriage regulate certain conditions that apply after the breakdown of a marriage, whether due to divorce or the death of the husband.⁵⁶ There is a waiting period (*iddah* period) set for women so that they can remarry.⁵⁷ This waiting time varies depending on the cause of the end of the marriage, such as divorce or the death of the husband. This is consistent with the practice that applies in many societies and religions, which have special rules following a separation in marriage.⁵⁸

It is important to note that this waiting time rule is not an absolute prerogative, but rather part of a regulation designed to protect women in separation situations. The prerogative in marriage should be exercised by complying with the stipulated provisions, including waiting for the specified time (*iddah* period) before undertaking remarriage. This aims to maintain clarity and fairness in marriage law, protecting the rights of women involved in this process. Gender equality remains a crucial issue, but it must be understood within the context of applicable laws and regulations.

⁵⁵ Louisa Yesami Krisnalita, 'Perempuan, HAM Dan Permasalahannya Di Indonesia' (2018) 7 *Binamulia Hukum* 71.

⁵⁶ Dahwadin Dahwadin and others, 'Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam Di Indonesia' (2020) 11 *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* 87.

⁵⁷ Hafidz Syuhud, 'Pendapat Imam Malik Tentang Sanksi Bagi Perempuan Yang Menikah Pada Masa 'Iddah' (2020) 4 *Istidlal: Jurnal Ekonomi dan Hukum Islam* 64.

⁵⁸ Izzin Samah and others, 'Izin Isteri Dalam Poligami Perspektif Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan' (2014) *XIV Hukum Islam* 34.

Conclusion

Polyandry is a marriage practice in which a woman has more than one husband at the same time, which is contrary to the principle of monogamy that underlies the marriage law in Indonesia. Although it is legally banned, this practice continues in some communities in Indonesia. The implementation of laws related to polyandry is difficult because it encounters several legal challenges, including law implementation and enforcement, conflicts between the law and traditional views, and patriarchal culture. The debate about the practice of polyandry, human rights, and conventional views raises complexities in relation to gender equality, cultural values, and the law. Thus, polyandry cannot be regarded as a demand for gender equality, but rather as a violation of marriage law that requires a firm response through legal policies that are just, comprehensive, and firmly rooted in cultural values as well as the true principles of gender justice.

On the one hand, traditional views support polyandry as a form of gender equality and individual autonomy in marriage. Existing laws and social norms generally prohibit this practice due to the potential for complex social and legal consequences. On the other hand, gender equality in human rights is a fundamental principle that must be respected, involving the recognition of the prerogatives of individuals regardless of their gender. However, the state may limit the fulfillment of these rights in certain situations, including in the context of polyandry, which is considered an unusual form of marriage. These restrictions aim to prevent the abuse of individual (especially for women) prerogatives and maintain clarity in family and offspring affairs.

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