

A Study of Women and Polygamy in the Compilation of Islamic Law from an Egalitarian Epistemological Perspective by Asma Barlas

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Abstract

Problem statement: polygamy a contentious issue in Islamic family law, is frequently perceived as a practice detrimental to women and at odds with the principles of gender justice. **Objective:** this study aims to analyse the position of women within polygamous practices as delineated by the Compilation of Islamic Law (KHI) in Indonesia, employing the egalitarian epistemological perspective posited by Asma Barlas. Through Barlas' approach, which advocates for an egalitarian interpretation of Islamic texts, this article seeks to investigate the extent to which the KHI affords protection and justice for women in the context of polygamy. **Methods:** this study utilises a qualitative method incorporating text analysis and in-depth interviews. Text analysis concentrates on articles pertaining to polygamy within the KHI, as well as relevant works by Asma Barlas. **The results:** the findings indicate that while the KHI has established certain conditions for men seeking to engage in polygamy, its implementation is often gender-biased and fails to adequately safeguard women's rights. Through Asma Barlas' perspective, it is demonstrated that a more egalitarian interpretation of Islamic law could yield a fairer and more inclusive understanding of the issue of polygamy. **Conclusion:** this study advocates for the revision of the articles concerning polygamy in the KHI, taking into account egalitarian principles and gender justice to enhance the protection of women engaged in polygamous practices in Indonesia.

Keywords: Asma Barlas, Compilation of Islamic Law Polygamy, Gender Justice, Islamic Family Law.

Abstrak

Poligami sebagai salah satu isu kontroversial dalam hukum keluarga Islam, sering kali dianggap sebagai praktik yang merugikan perempuan dan bertentangan dengan prinsip keadilan gender. Penelitian ini bertujuan untuk menganalisis posisi perempuan dalam praktik poligami berdasarkan Kompilasi Hukum Islam (KHI) di Indonesia melalui perspektif epistemologi egaliter yang dikemukakan oleh Asma Barlas. Melalui pendekatan Asma Barlas, yang menekankan pada interpretasi egaliter terhadap teks-teks Islam, artikel ini berupaya untuk mengeksplorasi sejauh mana KHI memberikan perlindungan dan keadilan bagi perempuan dalam konteks poligami. Penelitian ini menggunakan metode kualitatif dengan pendekatan analisis teks dan wawancara mendalam. Analisis teks difokuskan pada pasal-pasal yang terkait dengan poligami dalam KHI serta karya-karya Asma Barlas yang relevan. Hasil penelitian menunjukkan bahwa meskipun KHI telah menetapkan syarat-syarat tertentu bagi lelaki yang ingin berpoligami, pelaksanaannya sering kali masih bias gender dan tidak sepenuhnya melindungi hak-hak perempuan. Melalui perspektif Asma Barlas, ditemukan bahwa interpretasi yang lebih egaliter terhadap hukum Islam dapat memberikan pemahaman yang lebih adil dan inklusif terhadap isu poligami. Penelitian ini menyarankan perlunya revisi terhadap pasal tentang poligami dalam KHI dengan mempertimbangkan prinsip-prinsip egaliter dan keadilan gender untuk memperkuat perlindungan terhadap perempuan dalam praktik poligami di Indonesia.

Kata Kunci: Asma Barlas, Hukum Keluarga Islam, Keadilan Gender, Kompilasi Hukum Islam, Poligami.

Introduction

Throughout history, discrimination against women has been a persistent feature of human society, including within the institution of marriage. In the pre-Islamic era, women in Mecca were regarded as mere objects. It was commonplace for a husband to have up to 12 wives (Engineer, 2009). Moreover, the Arabs of that period practised polygamy without any restrictions, in addition to maintaining *sariiyah* (sex slaves). This phenomenon reflected the characteristics of a patrilineal family system, which positioned men at the centre of the household (Karim, 1990)

Women during this period were treated as property that could be inherited. Upon the death of the husband, the wife would be inherited by the eldest son, who was free to act as he wished towards his father's wife (his own mother). Women were also prohibited from expressing any form of dissent, having to acquiesce even if their husbands divorced and remarried them as frequently as they desired. During the time of the Prophet Muhammad ﷺ, he and his companions also engaged in polygamy. Historical records indicate that the Prophet Muhammad had 12 wives (Hatta, 2017). Some sources suggest he had 13 wives (Wilar, 2006), while Abu Bakr al-Siddiq had four wives (Ash-Shallabi, 2017), and Umar bin Khattab is recorded to have married a total of nine wives throughout his life (Hatta, 2013). Polygamy was not exclusive to Muslims; it was also practised among the pagan Quraish, indicating that polygamy was a common practice of the time.

This culture of polygamy typically arises in societies that adhere to patriarchal ideologies, which establish a system that permits men to act without challenge and positions women as entirely dependent on men (Muhammad, 2019). Such patriarchal cultures often lead to gender inequality that oppresses women, undermining their basic rights and reinforcing male dominance, thereby perpetuating the notion that women are perpetually reliant on men and limiting their societal roles (Hasan et al., 2022)

Islamic teachings, as articulated by the Prophet Muhammad, aimed to reform these practices by introducing criticism and restrictions through Surah al-Nisa (4) verse 3. This verse was critical, as polygamy was then practised arbitrarily, primarily serving the interests of men, particularly their sexual desires. The criticism elucidated that polygamy should primarily serve to protect orphans and war widows, rather than to fulfil male desires, and that it should be limited to a maximum of four wives (Barlas, 2019) This aligns with the polygamy practised by the Prophet Muhammad ﷺ, who married women who were older or widowed (with the exception of Aisha). This practice was not solely motivated by biological desires, and the historical context was fraught with conflict; the Prophet's life was closely associated with warfare and jihad (Cahyani, 2018)

Over time, interpretations of the Qur'an have significantly influenced the formulation of polygamy within the *fiqh* that has developed in society. These interpretations are sometimes regarded as sacred and thus beyond scrutiny, yet they are also human constructions that arise from specific sociocultural contexts. Consequently, diverse approaches are necessary to unearth the meanings contained within the Qur'an (Hasan et al., 2022). Interpretations of the Qur'an concerning polygamy often exhibit gender bias when assessed from a contemporary perspective. For instance, there is a notable lack of requirement for a wife's consent

when a man intends to practise polygamy, and the conditions for polygamy, according to some scholars, are primarily centred on fairness, as articulated in the al-Munir commentary (Az-Zuhaili, 2016)

In the early 20th century, additional stipulations beyond those outlined in fiqh began to be imposed on the practice of polygamy in an effort to restrict its implementation. In Indonesia, this was formalised through Law No. 1 of 1974 and the Compilation of Islamic Law. Prior to the enactment of these regulations, polygamy was relatively easy to practise for several reasons (Trigiyatno, 2021): (1) There were no stringent conditions for practising polygamy, (2) considerations for the wife or wives were absent, (3) there was a lack of legal framework, (4) courts were not involved in adjudicating a husband's desire to engage in polygamy, (5) the notion of justice, as required by fiqh, was interpreted solely in financial terms, and (6) society viewed polygamy as an ordinary practice. Consequently, Indonesia instituted regulations governing marriage, including polygamy, through Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law, as a means to curtail arbitrary polygamy.

Upon closer examination, the existing regulations, particularly the Compilation of Islamic Law, have not fully addressed the interests of women, as illustrated by provisions that contradict the values of the Qur'an, such as equality, brotherhood, and human rights (Muttaqien, 2005). Furthermore, these regulations are at odds with international law, such as The Convention on the Elimination of All Forms of Discrimination against Women, which prohibits any form of discrimination against women. It may be posited that the KHI reflects the fiqh of the Middle East, which undoubtedly operates within different social conditions than those in Indonesia (Anwar et al., 2020). This evidence indicates that the existing structure is not beneficial to women. The KHI positions women as subordinate, and the rights afforded to women are not equivalent to those granted to men, perpetuating a culture that encourages women to remain primarily within the domestic sphere (Hadi, 2014).

For this reason, a new interpretation of the Compilation of Islamic Law is required to render it more egalitarian and to provide a fair legal framework for women. This paper seeks to propose Asma Barlas' egalitarian theory as a lens through which to examine the actual position of women in the Compilation of Islamic Law and as a foundation for more equitable legal reforms in the future. To the best of the author's knowledge, no research has employed Asma Barlas' egalitarian theory as a framework for analysing the regulations surrounding polygamy in the Compilation of Islamic Law. For instance, in 'Polygamy from an Islamic Legal Perspective' by Andi Intan Cahyani (2018), the author utilises various mufassir perspectives to elucidate polygamy. Additionally, 'A Brief History of the Compilation of Islamic Law in Indonesia' by Hikmatullah (2017) presents the historical context of the compilation of Islamic law, which has undergone various transformations, without addressing a specific issue. Furthermore, the paper by Hasan et al. (2022) entitled 'Polygamy: Uncovering the Effect of Patriarchal Ideology on Gender-Biased Interpretation' concentrates more on gender-biased interpretations.

Asma Barlas' egalitarian theory was selected for its distinctiveness. Typically, advocates for women's rights draw from feminist or social theories;

however, Asma Barlas diverges from this approach. She bases her arguments on the Qur'an itself, positing that it is fundamentally an egalitarian sacred text, while acknowledging that interpretations of the Qur'an are often biased. Consequently, she offers her own interpretation of the Qur'an that prioritises egalitarian values.

Methods

This study employs a qualitative methodology, integrating both legal and sociological perspectives. The legal approach is utilised to analyse the laws and regulations in Indonesia, specifically the Compilation of Islamic Law, with a focus on the articles pertaining to polygamy, namely Articles 55 to 59. The sociological approach is adopted to examine and apply the egalitarian theory articulated by Asma Barlas. This framework is employed to elucidate the position of women within the Compilation of Islamic Law, particularly in relation to polygamy, through the lens of Barlas's egalitarian theory.

A Study of Polygamy within the Framework of Islamic Law and Its Implementation in Indonesia

The Compilation of Islamic Law (KHI) was established in response to the needs of society and judicial institutions at that time. At that point, religious courts lacked written regulations that could serve as a foundation for adjudicating cases. Furthermore, within Islamic jurisprudence, there existed a multitude of differing opinions among scholars, which resulted in inconsistent judicial decisions arising from varying foundational principles (Hikmatullah, 2018).

Prior to the establishment of the KHI, the Ministry of Religion, via 'Surat Edaran Kepala Biro Pengadilan Agama RI No. B/1/735 on 18/02/1958,' recommended the utilisation of 13 books of fiqh as references for judges in their decision-making processes. However, reliance on these 13 books of fiqh ultimately led to complications, as it resulted in divergent rulings from judges, creating the potential for inconsistent decisions in similar cases (Herawati, 2011). An additional concern was the possibility for parties who lost cases to contest the use of these texts, which did not serve their interests. They also advocated for the consideration of other texts offering alternative perspectives. It is important to note that the fiqh books in question were written around the 2nd century AH, reflecting conditions that differ markedly from contemporary society. Thus, a contextual and Indonesia-specific legal reference framework is essential (Khisni, 2017).

In summary, in 1985, through collaboration between the Chief Justice of the Supreme Court and the Ministry of Religion, Joint Decision No. 07/KMA/1985 was issued regarding the Implementation of the Islamic Law Development Project through Jurisprudence, commonly referred to as the Islamic Law Compilation Project. Subsequently, in 1991, Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law was issued, marking the point at which the KHI began to be implemented as substantive law and adopted as a legal reference in religious courts (Khisni, 2017)

The provisions concerning polygamy consist of five articles, namely (Kompilasi Hukum Islam, n.d.)

Aspect	Article	Compilation of Islamic Law
Principle of Marriage	55	<ol style="list-style-type: none"> 1. A man may have multiple wives simultaneously, but the total number must not exceed four. 2. The primary stipulation for possessing more than one wife is that the husband must demonstrate the capacity to treat his wives and children equitably. 3. Should the primary stipulation outlined in paragraph (2) be unfulfilled, the husband is prohibited from acquiring an additional wife.
Permit of Polygamy	56	<ol style="list-style-type: none"> 1. An individual seeking to contract a marriage with multiple women is required to obtain permission from the Religious Court. 2. The application for such permission, as referenced in paragraph (1), must be submitted in accordance with the procedures delineated in Chapter VIII of Government Regulation No. 9 of 1975. 3. A marriage entered into with a second, third, or fourth wife without the requisite permission from the Religious Court shall be deemed legally invalid.
	57	<ol style="list-style-type: none"> 1. The Religious Court shall grant permission for a husband to marry more than one wife solely under the following conditions: <ol style="list-style-type: none"> a. The wife is unable to fulfil her obligations as a spouse. b. The wife has a physical disability or an incurable disease. c. The wife is unable to conceive.
Consent of the wife	58	<ol style="list-style-type: none"> 1. In addition to the primary requirements delineated in Article 55, paragraph (2), the attainment of permission from the Religious Court necessitates compliance with the stipulations outlined in Article 5 of Law No. 1 of 1974, which include: <ol style="list-style-type: none"> a. The consent of the wife b. The assurance that the husband is capable of providing for the needs of his wife or wives and children 2. Notwithstanding the provisions of Article 41, letter b of Government Regulation No. 9 of 1975, the consent of the wife or wives may be expressed either in writing or orally. However, even in instances of written consent, this must be

		corroborated by the oral consent of the wife during the Religious Court hearing. 3. The consent referred to in paragraph (1)(a) is exempted for a husband in circumstances where his wife or wives are unable to provide consent and cannot be a party to the agreement, or in cases where there has been no communication from the wife or wives for a minimum duration of two years, or for other reasons that necessitate judicial evaluation.
Concent of the wife denied	59	In the event that the wife refuses to provide her consent, and the request for permission to marry multiple spouses is grounded in one of the reasons outlined in Articles 55(2) and 57, the Religious Court may grant such permission following an examination and hearing of the wife involved during the Religious Court proceedings. Subsequently, either the wife or the husband may file an appeal or cassation against this decision.

The regulations outlined in the KHI are recognised and valid; however, the practice of polygamy presents a myriad of advantages and disadvantages for various stakeholders, rendering these factors increasingly salient (Ashidiqie, 2021). Certain groups endorse polygamy without imposing specific conditions beyond the principle of fairness, as articulated in the works *Tafsir al-Azhar* by Buya Hamka, *Fikih Sunnah* by Sayyid Sabiq, and the *tafsir* of Ibn Kathir. Conversely, others advocate for a more moderate stance on this issue, such as Prof. Quraish Shihab, who posits that polygamy is a form of marriage that cannot be entered into lightly by individuals desiring multiple spouses unless they can meet the requisite criteria (Shihab, 2002).

A formidable opposition to polygamy is presented by Siti Musdah Mulia, who categorically rejects the practice and deems it *haram lighairih* (prohibited for other reasons), arguing that the majority of polygamous unions do not adhere to the tenets of equality, justice, and benefit (Wahid, 2014). She asserts that the rules established in the KHI are more aligned with the *fiqh* of the Middle East, which is steeped in patriarchal culture. This assertion is further corroborated by the fact that the KHI's formulation relied on 13 traditional *fiqh* texts from the Shafi'i school of thought as references (Suleman & Suleman, 2019)

The reality of polygamy often deviates from the aforementioned stipulations, frequently centring on men's sexual needs. Proponents may invoke the claim that polygamy is a *Sunnah* of the Prophet, yet they overlook that the Prophet's practice of polygamy was intended to provide protection for widowed elderly women (Saidah, 2017). In some instances, men have married multiple women, only to divorce one when she reaches menopause, thereby ensuring that their total number of wives remains at four. Consent from the wife is often disregarded, as these men assert that such matters are not governed by Islamic law and therefore do not necessitate compliance.

Prof. Nasaruddin Umar has long contended that polygamy is a contributing factor to divorce and that women and children may suffer neglect as a result. He emphasises that those wishing to engage in polygamy must satisfy the stipulated requirements, as Indonesian regulations do not outright prohibit polygamy but rather establish specific conditions (Agama, 2007)

The unilateral execution of polygamy, which results in the wife's dissatisfaction, can undermine the sanctity of marriage, subjecting women to various forms of injustice and discrimination, which is fundamentally at odds with the principles of marriage as enshrined in the KHI. Article 3 explicitly states that marriage ought to engender Sakinah, mawaddah, and Rahmah. Can these three objectives be realised if the wife feels aggrieved by her husband's polygamous conduct? If a judge grants a request for polygamy based on the criteria delineated in Article 57, does this not exacerbate the wife's emotional turmoil? After experiencing physical deprivation, she is also compelled to accept a polygamous arrangement. Moreover, there exists no provision addressing the inverse scenario. Is it permissible for a wife to seek divorce?

Ideally, such a provision should be unequivocal. If these conditions are unmet, the marriage lacks legal recognition and validity. The Marriage Law and Compilation further stipulates that every marriage must be registered at the KUA. From this discussion, it is evident that marriage in Indonesia is fundamentally anchored in the principle of monogamy, permitting a husband to have only one wife. Should a husband desire to marry again, obtaining the wife's consent is an absolute prerequisite, accompanied by the obligation to treat both the wife and children equitably. If the husband is unable to fulfil this requirement for fairness, he is restricted to a single marriage. This legal framework is designed to safeguard the rights of wives against the arbitrary actions of husbands, thereby fostering harmonious, joyful, and enduring families (Hayatuddin et al., 2022)

Should the aforementioned stipulations be disregarded, particularly if a husband engages in clandestine polygamy without his wife's knowledge and without obtaining permission from the religious court, such a second marriage, lacking the requisite approval, is deemed null and void, treated as if it never occurred (Setiono & Bahroni, 2018). This is articulated in Article 71(a), which states that a marriage may be annulled if 'a husband practises polygamy without the permission of the religious court.'

In summary, Indonesian law meticulously regulates polygamy to ensure equity and the welfare of all parties involved in a marriage. The consent of the wife and the husband's ability to act justly are non-negotiable. These provisions aim to prevent the abuse of power by husbands, guarantee the protection of wives, and maintain stability and happiness within the family. Nonetheless, as previously elucidated, certain provisions may exhibit biases from an egalitarian perspective, as they primarily consider the male viewpoint. Further elaboration on this matter will be provided in the subsequent subsection.

Intellectual Biography of Asma Barlas

Asma Barlas is a prominent figure from Pakistan, a country where the majority of the population adheres to the Hanafi school of Islam. During the regime of Ziaul Haq, Asma Barlas distinguished herself as one of the first women to serve in the foreign

service. Subsequently, she became an assistant editor at the newspaper *The Muslim*, which was known for its critical stance towards the government. Consequently, she was deported and chose to relocate to the United States, where she was granted political asylum. Asma Barlas earned a Bachelor's degree in English Literature and Philosophy, followed by a Master's degree in Journalism in Pakistan. She then pursued an additional Master's degree in International Studies and obtained her PhD in the same discipline from the University of Denver. Currently, Asma Barlas serves as a lecturer at Ithaca College.

Some of her publications include:

1. Barlas, Asma. *Believing Women in Islam: Unreading Patriarchal Interpretation of the Qur'an*. Austin, TX: University of Texas Press, first edition, 2002; revised second edition, 2019. Translated into Indonesian as *Cara Qur'an Membebaskan Perempuan*. Jakarta: Serambi, 2005.
2. Barlas, Asma, and David R. Finn. *Believing Women in Islam: A Brief Introduction*. Austin, TX: University of Texas Press, 2019.
3. Barlas, Asma. *Re-Understanding Islam: A Double Critique*. Spinoza Lectures, University of Amsterdam. Amsterdam: Van Gorcum, 2008.
4. Barlas, Asma. *Democracy, Nationalism and Communalism: The Colonial Legacy in South Asia*. Boulder, CO: Westview Press, 1995; Routledge, 2018.

Asma Barlas is also engaged in producing various scholarly articles, including:

1. Barlas, Asma. "Developing a Dialogue between Muslim and Catholic Educators." *International Studies in Catholic Education*, vol. 13, 2021; published online 29 June 2021.
2. Barlas, Asma. "Reading the Word in a Foreign Tongue: Islam's Scripture and Non-Arab Muslims." *Word, International Linguistic Association*, vol. 65.1 (March 2019).
3. Barlas, Asma. "Secular and Feminist Critiques of the Qur'an: Anti-Hermeneutics as Liberation?" for the Roundtable: "Feminism and Islam: Exploring the Boundaries of Critique," and "A Response" to my respondents. *Journal of Feminist Studies in Religion*, vol. 32, no. 2; Fall 2016.
4. Barlas, Asma. "Uncrossed Bridges: Islam, Feminism, and Secular Democracy." *Philosophy and Social Criticism, Reset-Dialogues Istanbul Seminar*, 2012, vol. 39, no. 4/5, May 2013.

The Concept of Egalitarianism by Asma Barlas

Asma Barlas' egalitarian principle is predicated on the assumption that the Qur'an is intrinsically a holy text characterised by fairness and gender equality. The challenge arises from the manner in which individuals interpret the Qur'an, which is inevitably shaped by a multitude of factors including educational background, cultural context, geographical conditions, and other influences, leading to interpretations that may exhibit cultural biases, particularly those rooted in patriarchy (Barlas, 2019).

When a patriarchal perspective is employed in the interpretation of the Qur'an, it results in several assumptions: first, that there are ontological and ethical-moral distinctions between men and women; second, that these distinctions are perceived as natural or biological; and third, that the disparate treatment of men

and women within the Qur'an is indicative of their inherent inequality. It is undeniable that certain provisions in the Qur'an apply differently to men and women, particularly in areas such as marriage, inheritance, and divorce, which fosters the perception that men and women are unequal and even adversarial. This is often rationalised as the destiny of women, either because they are considered to have been created from a part of the male body, or, for those who contest this view, because women are believed to have been created after men (Barlas, 2019).

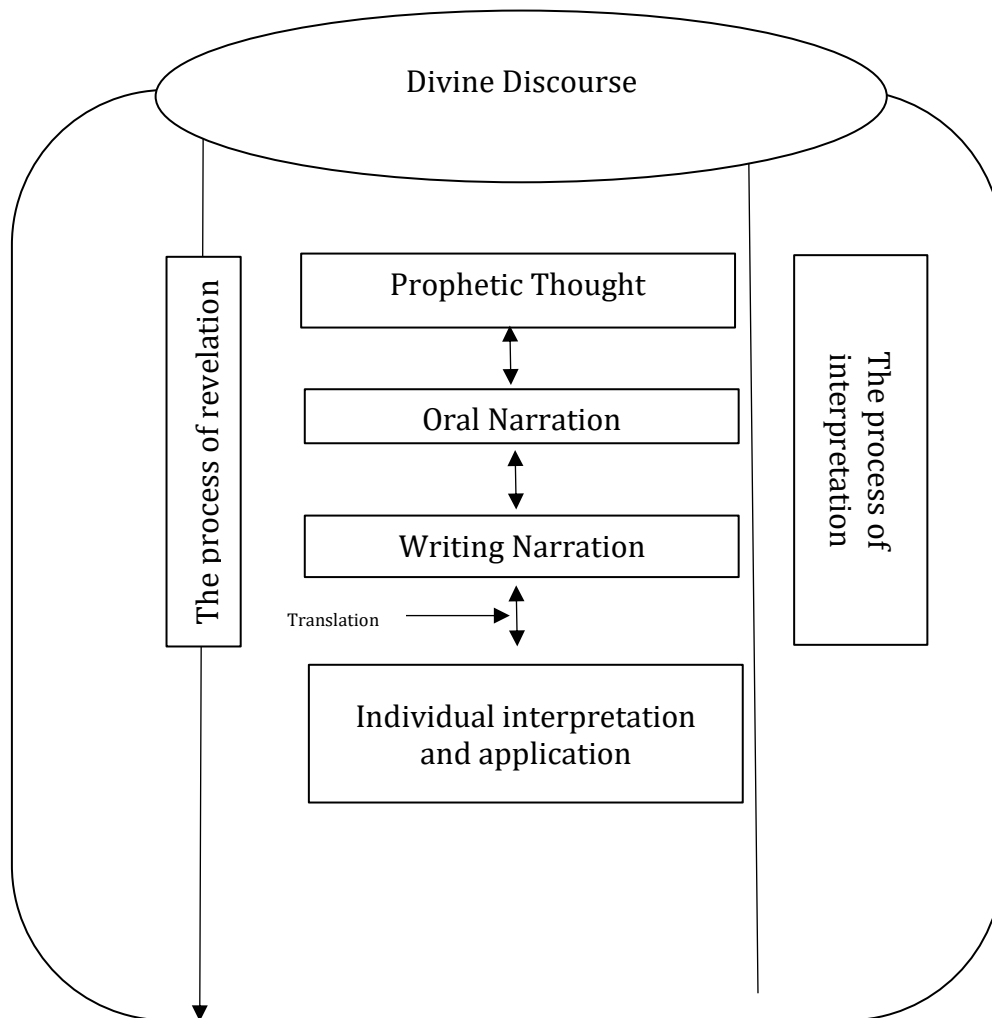
Barlas posits that the Qur'an is a polysemic text, meaning it can be interpreted from various perspectives, including an egalitarian viewpoint. He observes that the majority of interpretations of the Qur'an are influenced by the fact that it was revealed in a patriarchal society and that most interpreters are men, which results in a failure to adequately address the interests of women (Barlas, 2019). It is important to recognise that patriarchal interpretations of the Qur'an reflect the socio-cultural conditions in which the interpreters exist; thus, the measure of generative justice found in these interpretations mirrors the existing gender relations in society (Dzuyahatin et al., 2002).

Contemporary society differs significantly from the past, with women now occupying roles that were historically dominated by men, and in some cases, surpassing achievements recorded in Islamic history. Several nations, including Indonesia, have been led by women, and women currently hold ministerial positions, challenging the notion of women's inferiority and the existence of second-class citizenship. Nonetheless, this reality does not eliminate negative perceptions of women, underscoring the increasing necessity for discourses aimed at achieving gender equality, as advocated by Asma Barlas (Yusdai & Arfaizar, 2022).

Barlas proposes an egalitarian theory that endeavours to elevate the status of women through the lens of the Qur'an. She employs a hermeneutical method that reads the Qur'an and its interpretations as an integrated whole with specific themes. This method encompasses two approaches: 'from the front and from the back.' Through the 'from the back' approach, she seeks to comprehend the historical context in which the text was revealed, noting that gender roles and segregation are influenced by social and economic factors rather than divine mandates. Meanwhile, the Qur'an is seen as addressing contemporary contexts, thereby maintaining its relevance and universality. Fazlur Rahman refers to this process as the 'Double Movement,' a concept describing the progression from present-day understanding to historical context and back to the present with enhanced insight (Barlas, 2019).

Three foundational aspects support the assertion that the Qur'an is a text advocating gender equality. First, the Oneness of God, or Tawhid, signifies that God is singular and His sovereignty is indivisible; thus, the assertion that men serve as rulers over women or act as intermediaries between women and God is erroneous (Barlas, 2006). Tawhid further implies self-liberation and the rejection of all oppressive ideologies regarding humanity, affirming the equality of all individuals before Allah (Muhammad, 2021). Second, justice denotes that Allah ﷻ never engages in injustice nor instructs humanity to do so. Third, the uniqueness of God indicates that Allah has no equal and cannot be represented; therefore, it is misguided to perceive men as extensions of God or to claim divine favour towards men (Barlas, 2019).

To substantiate the assertion that the Qur'an is a gender-equal sacred text, a combination of historical and hermeneutical arguments is essential for a clearer understanding of the religious perspective on women. Historical arguments are employed to examine the textual and sexual political dynamics that have emerged within societies, particularly the correlations and interactions that have shaped patriarchal religious interpretations regarding gender relations. In contrast, hermeneutical arguments aim to demonstrate that an egalitarian epistemology represents a viable mode of thought that advocates for equal relationships as rooted in Islamic teachings (UII, 2012). The diagram below illustrates the process of the Qur'an's revelation to humanity and the ways in which humans comprehend the text (Barlas, 2019).



The diagram above illustrates that the process of revelation and interpretation occurs in several stages. Divine discourse, in this instance represented by the Qur'an, is not subject to imitation, challenge, or error. However, individual interpretation and application, regarded as the concluding phase of revelation and the initial point of human comprehension of the sacred text, cannot be deemed absolutely true, as they are products of human cognition. Consequently, it is essential to differentiate between the divine word and its manifestation in the

world. Interpretation, serving as the preliminary step in comprehending divine discourse, entails the process of contextualising the message/revelation of God across various levels. This contextualisation is necessitated by the eternal nature of the Qur'anic text, which remains unchanged; however, this permanence does not extend to human creativity, which is boundless. It is this interpretative process that is inherently subjective, imperfect, and susceptible to critique (Barlas, 2019).

Human interpretation is an open-ended endeavour and cannot culminate in a singular perspective. Although certain interpretations may be regarded as highly persuasive, this process must remain ongoing, as additional insights may continually emerge. Thus, the understanding of divine discourse is an inexhaustible journey. In this context, the Qur'an as the word of God cannot convey a singular meaning, as no individual can guarantee the ability to interpret the Qur'an with absolute certainty. Moreover, there exist verses in the Qur'an that are *mutasyabihat*, whose meanings cannot be definitively established. These variances in interpretation highlight the reality that the Qur'an, as a text, can be approached in diverse manners contingent upon the circumstances and cultural backgrounds of both the author and the reader. Therefore, interpretations pertaining to women may evolve in response to changes in temporal and social contexts (Barlas, 2019).

Interpretation of the Status of Women in Polygamy according to Asma Barlas

The verses of Allah concerning polygamy in Surah al-Nisa offer solutions to address various forms of abuse against prisoners of war who have been enslaved, as well as to protect war widows and orphaned children who have lost the protection of their husbands or fathers. These individuals are particularly vulnerable to threats such as fraud, theft, starvation, and sexual abuse. Therefore, during the period of revelation, it was imperative to establish guidelines regarding how believers should treat the most vulnerable members of the family (Barlas & Finn, 2019).

In her interpretation of Surah al-Nisa (4:3) on polygamy, Asma Barlas argues that the verse seeks to restrict the practice of polygamy concerning orphans, applicable only when the guardian of the orphan is unable to treat the orphans fairly without marrying them (assuming that the husband would be more capable and equitable in managing the property of his wife than merely acting as her guardian). If the guardian believes that marriage will not create difficulties for his wife, then polygamy may be practised. According to Barlas, the primary intention of polygamy is to ensure social justice for orphaned girls (Barlas & Finn, 2019).

Moreover, the translation of 'other women' is problematic, as the term 'other' does not exist in the Qur'an. Barlas further contends that this interpretation is illogical, for if the term 'other woman' is accepted, such a woman may already have a guardian (family) and thus would not easily fall victim to injustice. In contrast, orphaned girls whose fathers died in battle, as well as the widows left behind, are particularly susceptible to unfair treatment, both personally and financially. It is difficult to assert that marrying another woman who possesses protection serves to safeguard orphans. However, marrying an orphaned girl provides her protection, especially if the bride is a widow with children, as this protection extends not only to the mother but also to her children (Barlas & Finn, 2019).

When Allah revealed the verse concerning polygamy, He did not mention the sexual needs of men or women, nor did He present polygamy as a solution for

infertility. If polygamy is accepted, it represents a societal mechanism that allows women to access men or vice versa for social reasons, particularly in contexts where the number of men and women is imbalanced. The Qur'an itself does not endorse this approach but prioritises polygamy as a means to ensure justice for orphaned girls, provided that the guardian meets the criteria outlined in the Qur'an (*Interview with Asma Barlas, 2024*)

Is polygamy an ideal form of marriage? According to Asma Barlas, polygamy is not an ideal form, and she favours monogamous marriage. This viewpoint is supported by the same verse frequently cited as a justification for polygamy, namely al-Nisa verse 3, which concludes with a command to marry only once to prevent oppression of the spouse. Furthermore, in verse 129, it is reiterated that men cannot be fair to their wives, even if they genuinely desire to be so. There exists a significant disparity between intention and reality, and in the context of polygamy, the Qur'an adopts a fair and realistic stance: even with good intentions, men are incapable of being just to multiple wives (Barlas, 2019).

Critique and Revision of the Polygamy Article in the Compilation of Islamic Law

If we employ Asma Barlas' egalitarian epistemological perspective, it can be argued that several articles do not adequately accommodate women's interests, as they tend to favour men. Among these articles is Article 55(1) of the KHI, which reflects a measure of protection for women by clearly limiting the number of wives a man may marry. In contrast, Law No. 1 of 1974 on Marriage imposes no such limits; while the law ostensibly favours monogamy, it does not preclude those wishing to practise polygamy.

Consequently, it is imperative to impose clear limits. Article 55(2) asserts that 'justice' is a fundamental requirement, yet it fails to provide specific criteria. Polygamy encompasses complex dimensions, including emotional and economic rights, as well as the welfare of wives and children. This ambiguity risks leading to biased or subjective interpretations, particularly given the diverse perceptions of what constitutes 'fairness' in marital relationships. In the absence of a clear definition, this fairness cannot be quantified and may be misused to justify inequalities within domestic relationships.

Thus, the author proposes that specific criteria should be established in the KHI to elucidate the meaning of justice in the context of polygamy, encompassing emotional, financial, physical, and other dimensions to ensure a more measurable and comprehensive protection of the rights of women and children.

The Qur'an cautions in Surah al-Nisa (4) verse 129 that men may not be able to achieve fairness, even with the best intentions (Barlas, 2019). Consequently, polygamous marriages often give rise to jealousy, which may culminate in divorce. Even if physical or financial equity is attained, should polygamy inflict harm upon the wife, it becomes impermissible (Muttaqin & Syamsiyani, 2023)

Turning to Article 57, two aspects can be identified as grounds for arguing that this article fails to accommodate women's interests.

Firstly, this article presupposes that the value of women is contingent upon specific functions, thereby reducing women to mere objects of marriage whose role is to meet the needs of their husbands and bear children, without acknowledging them as equal human beings. In truth, men and women are equal parties, both

entitled to love and peace. Women ought to be regarded as subjects of marriage, not objects, as one of the essential tenets of marriage is that it constitutes a social contract, with both parties entering into that contract as legal subjects. Therefore, wives ought to possess the right to refuse polygamy, and should this right be violated, they should be entitled to file for divorce in court (Barlas, 2019)

Secondly, Article 57 discriminates against women on the grounds of health. This article permits a husband to engage in polygamy if his wife experiences certain circumstances, thereby positioning the wife as perpetually at fault. Is the wife the only one incapable of fulfilling her obligations? Is she the only one who may suffer physical disabilities? Is she the only one who may be unable to bear children? If polygamy proceeds under these conditions, the wife may endure emotional distress and find herself unable to advocate for her own rights due to the constraints imposed by Article 57. This illustrates the discriminatory nature of the article. The three conditions set forth in Article 57 utilise the phrase 'unable to,' implying that the wife cannot fulfil her obligations even if she wishes to, which falls outside her control. Furthermore, this article does not afford the wife the opportunity to seek another partner should her husband encounter similar circumstances, as if the wife is expected to acquiesce to polygamy willingly (Paputungan & Kau, 2020). Thus, the expectation is placed upon the wife to exhibit patience if her husband faces such issues.

These two points indicate that the predominant focus of Article 57 of the KHI is solely on the interests of men, particularly from a biological perspective, while women are expected to meet these obligations. Should they be unable to do so, the husband is permitted to practise polygamy, as this is deemed justified (Lubis, 2022). This article also perpetuates gender inequality against women, as it implies that all responsibility lies with women and associates them with specific roles beyond their fundamental anatomical functions (such as motherhood). There is no provision within the article regulating the legal recourse available to women if the conditions outlined in Article 57 apply to their husbands.

This article stands in direct contradiction to the intended purpose of regulating polygamy within Islamic law. The verses concerning polygamy were initially revealed to prioritise the protection of women and did not confer special privileges upon men. The Qur'an does not predicate the justification for polygamy on the fulfilment of men's needs, particularly sexual needs. In fact, the Qur'an fundamentally seeks to impose limitations on the practice of polygamy, which previously lacked boundaries and failed to consider the interests of women (Barlas, 2019). In the context of equality and justice, it is essential to reassess the ethical foundations and legal criteria associated with polygamy to ensure fairness and humanity in recognising the roles of wives and acknowledging their autonomy in joint decision-making.

Should polygamy continue to be practised, it could serve as a means of facilitating access for women to men or vice versa for social reasons. Although the Qur'an does not advocate this approach, it permits polygamy solely as a solution to ensure justice and protection for orphaned women under specific conditions delineated in the Qur'an (*Interview with Asma Barlas, 2024*)

Article 59 of the KHI is particularly contentious and appears to contradict other articles regarding a wife's consent. This fact underscores the KHI's disregard for a woman's desire to avoid polygamy and reflects a lack of impartiality towards women (Nurdiansyah, 2018). From an egalitarian perspective, the wife's right to refuse or accept polygamy is merely a procedural formality, not a decision that is genuinely respected, as this article continues to permit the approval of polygamy based on certain justifications without thoroughly considering the wife's wishes or perspective. This undermines the wife's autonomy and voice within the marriage, reducing her decision to a mere formality that can be disregarded. Furthermore, this has the potential to impose psychological pressure upon the wife, compelling her to navigate a court proceeding merely to assert her rights, which should have been acknowledged and respected from the outset.

In reality, Islamic teachings position marriage as a bond between a couple, and also between the couple and Allah. Thus, marriage possesses a human dimension and is inherently profane in nature, generating rights and obligations, while the bond with Allah constitutes a covenant of worship. This is why the Qur'an refers to marriage as a sacred covenant, *mīṣaqan galīẓān* (Yusdani, 2015).

Marriage, as a contract, naturally comprises legal, social, and public dimensions. This contract transforms the status of the wife, who was historically considered property, into a woman with legal rights (a legal subject), including enforceable marital rights, such as the right to enter into a prenuptial agreement (Barlas & Finn, 2019).

Therefore, if a husband possesses the right to practise polygamy, the wife equally possesses the right to reject polygamy, and this right must be acknowledged by the KHI and cannot be diminished in any manner. This is in accordance with the Marriage Law, specifically Article 3(2), which stipulates that a husband may engage in polygamy if desired by the parties concerned. Although the phrasing of the law does not specify who the concerned parties are, if the right to submit a request is contingent upon the consent of another party, then logically, the request affects the rights (and interests) of that other party. Hence, the other party must be included in the application process to ensure their wishes, consent, or objections can be duly considered (Hazairin, 1986). Accordingly, one of the parties concerned must be the wife or wives of a husband intending to remarry.

Thus, the author advocates for a revision that ensures the wife's decision to refuse polygamy is an unequivocal right respected by the court and cannot be rescinded for any reason. Should the revision of the article still fail to safeguard the rights of the wife, it would be prudent to eliminate this article altogether to ensure justice in married life.

These provisions clearly illustrate the relative weakness of women's positions in the context of polygamy regulations compared to men. According to Siti Musdah Mulia, this imbalance arises because the Compilation leans more towards the fiqh practices prevalent in the Middle East and does not adequately reflect the interests of Indonesian Muslims. Its formulation largely adopts rules from classical texts, which are inherently conservative (Suleman & Suleman, 2019)

Conclusion

The Compilation of Islamic Law outlines several conditions and restrictions for husbands seeking to practise polygamy. However, these provisions are perceived as gender-biased, positioning women in a subordinate role, as the criteria for polygamy predominantly reflect the interests and needs of men. Furthermore, the requirement for women's consent appears to be rendered unnecessary, thereby failing to adequately safeguard women's rights. Asma Barlas' egalitarian theory highlights the necessity of an equitable interpretation of Islamic texts, including those pertaining to polygamy. In this context, Barlas' theory presents a more just and inclusive framework for understanding polygamy. Research findings indicate that revisions are essential to the KHI, specifically in Articles 55, 57, and 59, to incorporate egalitarian principles that align more closely with gender justice. These revisions may entail modifications in wording or the complete removal of certain articles, consistent with Barlas' argument for the need for an egalitarian interpretation of Islamic laws to enhance the protection of women's rights in the realm of polygamy. The egalitarian perspective emphasises the importance of recognising the dignity and rights of women in all facets of family life.

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