

Considering the Legality and Legitimacy of Polygamy Without the First Wife's Permission: A Critique of Islamic Legal Epistemology by Mohammed Arkoun

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Abstract

This article examines the legality and legitimacy of polygamy without the first wife's permission in contemporary Islamic family law through Mohammed Arkoun's critique of Islamic legal epistemology. Normatively, Indonesian positive law requires the first wife's consent and court approval as prerequisites for polygamy, yet in social practice polygamy is still frequently conducted outside these legal requirements. This tension reveals not merely a problem of legal compliance, but a deeper epistemological conflict between state law, ethical justice, and the sacralized authority of classical fiqh. Using a normative-theoretical method with an epistemological analysis of positive law, classical jurisprudence, and contemporary Islamic legal thought, this article argues that polygamy without the first wife's permission operates as a form of *l'impensé* (the unthinkable) within dominant Islamic legal reasoning. The article's main theoretical contribution lies in reframing polygamy not as a doctrinal-legal exception, but as an epistemological problem rooted in the sacralization of fiqh and the exclusion of ethical and social experience from legal reasoning. By applying Arkoun's critique of Islamic reason, this study proposes an epistemological reconstruction of Islamic family law that shifts the debate from textual permissibility toward ethical accountability and substantive justice.

Keywords: *Polygamy, Islamic Family Law, Criticism of Islamic Reason*

Introduction

Polygamy remains one of the most complex phenomena in contemporary Islamic family law, particularly when it is practiced without the permission of the first wife. Within the framework of Indonesian positive law, polygamy is not automatically permitted without fulfilling several administrative and substantive requirements, including written permission from the first wife and approval from a religious court, as stipulated in Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI).¹ Polygamy practices that do not meet

¹ Simon. Butt and Timothy. Lindsey, *The Constitution of Indonesia : A Contextual Analysis* (London: Bloomsbury Publishing, 2012).

these requirements have various legal consequences, such as uncertainty about the legal status of marriage and children, potential criminal action in the event of document falsification, and violations of the principle of protecting family rights under national law.² Several family law studies have shown that the practice of polygamy without the permission of the first wife often leads to unequal power relations within the family and weakens legal protections for women.³

Beyond the formal legal aspects, contemporary Islamic legal studies face a significant epistemological challenge: how to re-understand the normative basis of polygamy as social realities and demands for gender justice become increasingly pressing. Recent literature in Islamic family law emphasizes that polygamy can no longer be read solely as a classical fiqh norm, but rather as a socio-historical practice undergoing continuous transformation in the context of the modern state.⁴ Comparative studies show that various Muslim-majority countries have imposed strict restrictions on polygamy, placing the consent of the first wife as an ethical and legal prerequisite for ensuring substantive justice.⁵

The lack of consent of the first wife in polygamous practices not only raises administrative issues but also stimulates substantive debate about the relationship between normative texts, interpretive authority, and social reality. Several studies of contemporary Islamic law show that the requirement for the first wife's consent is not simply a product of state law, but rather a reflection of modern efforts to translate the principle of justice ('adl) into the context of more equal family relations.⁶ This highlights the tension between textual, ahistorical interpretations of Islamic jurisprudence and the need for normative reinterpretation that is more responsive to social dynamics.

Within the tradition of modern Islamic thought, a number of reformist thinkers have proposed ethical approaches to polygamy, emphasizing the principles of public welfare, social justice, and the protection of women's rights. Recent academic literature indicates that ethical readings of Islamic family law are gaining ground, particularly in the context of critiques of patriarchal jurisprudence and power relations within Muslim families.⁷ However, these approaches often stop at the normative-ethical level and fail to address epistemological critiques of the rational structures that shape Islamic family law itself.

This is where Mohammed Arkoun's thinking becomes relevant. Through his project of criticizing Islamic reason, Arkoun calls for dismantling the epistemic assumptions held

² RM Feener, ME Cammack - (No Title), and undefined 2007, *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, Cir.Nü.Ac.Jp (Cambridge: Cambridge University Press, 2021), <https://cir.nii.ac.jp/crid/1130000797890203520>.

³ Euis Nurlaelawati, "Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts," *Journal of Islamic Studies* 23, no. 3 (September 1, 2012): 415–18, doi:10.1093/jis/ets031.

⁴ Abdullahi Ahmed An-Naim, *Decolonizing Human Rights* (Cambridge: Cambridge University Press, 2021).

⁵ Ziba Mir-Hosseini et al., "Gender and Equality in Muslim Family Law," *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition*, January 1, 2013, 1–288, doi:10.35632/ajis.v31i4.1073.

⁶ Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007), doi:10.5117/9789053569740.

⁷ Wael Hallaq, "ONE. 'Rethinking the Islamic Tradition': A Conceptual Framework," in *Reforming Modernity: Ethics and the New Human in the Philosophy of Abdurrahman Taha* (New York: Columbia University Press, 2019), 33–76, doi:10.7312/hall19388-004.

sacred within the Islamic scholarly tradition, including in family jurisprudence.⁸ The concept of *l'impensé* (the unthinkable) and a critique of scholarly orthodoxy allow researchers to re-examine how polygamy, especially without the first wife's permission, is reproduced as a practice considered religiously legitimate despite its social and ethical problems.⁹ This approach positions Islamic family law not as a closed normative system, but as a historical product open to criticism and reinterpretation.

This article employs normative-theoretical analysis and epistemological critique, comparing Indonesian positive law provisions, classical Islamic jurisprudence discourse, and Arkoun's critical reading.¹⁰ This approach aims to uncover the "unthinkable" layers within the discourse on the legality and legitimacy of polygamy without the first wife's permission, while simultaneously reassessing its claims of normative legitimacy within the context of contemporary family justice.¹¹

Thus, this article argues that Mohammed Arkoun's epistemological critique offers a significant analytical framework for reconsidering the legality and legitimacy of polygamy without the first wife's permission, and opens up the possibility of a reconstruction of Islamic family law that is more just, contextual, and oriented towards protecting the rights of modern families.

Methods

This study employs a qualitative normative–theoretical research design aimed at critically examining the legality and legitimacy of polygamy without the first wife's permission within contemporary Islamic family law. Rather than measuring empirical behavior, this research focuses on the production, structure, and authority of legal knowledge, particularly how Islamic legal norms are constructed, justified, and maintained in relation to social realities and state regulations. The primary methodological approach used in this study is epistemological analysis, drawing on Mohammed Arkoun's critique of Islamic reason. Arkoun's framework is utilized to interrogate the epistemic assumptions underlying classical Islamic jurisprudence (*fiqh*), modern state law, and contemporary religious discourse on polygamy. Special attention is given to Arkoun's concepts of *l'impensé* (the unthinkable) and the sacralization of legal tradition, which help reveal how certain ethical and social dimensions—especially women's experiences and power relations within the family—are systematically marginalized in dominant legal reasoning.

This research relies on doctrinal and textual analysis of three main categories of sources. First, it examines positive legal texts, including Indonesian marriage law and related regulations governing polygamy, in order to identify the legal standards and normative objectives embedded in state family law. Second, it analyzes classical and contemporary Islamic jurisprudence literature, focusing on dominant interpretations of polygamy, consent,

⁸ Nina Nurmila, *Women, Islam and Everyday Life* (Routledge, 2009), doi:10.4324/9780203878545.

⁹ Ziba Mir-Hosseini, "Reclaiming Justice: Islamic Feminism, Patriarchal Law, and Popular Revolt in Iran," *Society* 62, no. 5 (October 27, 2025): 628–38, doi:10.1007/s12115-025-01132-6.

¹⁰ A Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Texas: University of Texas Press, 2019).

¹¹ C Kersten, *Islam in Indonesia: The Contest for Society, Ideas and Values* (Oxford: Oxford University Press, 2015).

and justice. Third, it engages with modern Islamic legal thought and critical scholarship, particularly works addressing gender justice, legal reform, and the ethical foundations of Islamic family law.

Data collection is conducted through systematic literature review, selecting authoritative primary texts (the Qur'an, classical fiqh manuals, statutory laws) and secondary academic sources (peer-reviewed journal articles, monographs, and contemporary legal studies). The selection of sources prioritizes relevance, scholarly credibility, and contribution to debates on Islamic legal epistemology and family law reform.

Data analysis is carried out using a critical-hermeneutical method, combining normative legal analysis with epistemological critique. Legal norms are not treated as fixed or ahistorical rules, but as products of interpretation shaped by specific socio-historical contexts and power relations. Through this analytical process, the study distinguishes between legality (formal compliance with state law and institutionalized jurisprudence) and legitimacy (ethical justification, social acceptance, and claims of religious authority).

The methodological orientation of this study is interdisciplinary, integrating insights from legal theory, Islamic studies, sociology of law, and gender studies. This integration allows the research to move beyond legal formalism and address the broader implications of polygamy for justice, authority, and women's rights in Muslim family life. By employing this normative-epistemological methodology, the study seeks not only to critique existing legal discourses but also to contribute to the reconstruction of Islamic family law as a reflective, contextual, and justice-oriented normative system.

Discussion

The Legality of Polygamy Without the First Wife's Permission in Positive Law and Islamic Law

Polygamy is one of the most frequently debated institutions of Islamic family law in the context of legal modernity and social change. On the one hand, polygamy has a clear normative basis in classical Islamic texts, both the Qur'an and the Islamic jurisprudence literature. On the other hand, the practice of polygamy, especially when carried out without the permission of the first wife, raises serious issues regarding social legitimacy, gender equity, and the certainty of family law in contemporary Muslim countries. This tension between normative legality and social legitimacy is a major problematic point in discussions of Islamic family law today.

Within the framework of classical Islamic jurisprudence, polygamy is understood as a conditional form of permissibility (*ibāḥah*), with a maximum of four wives and demands for justice as a moral and normative prerequisite. However, the majority of pre-modern Islamic jurisprudence literature did not develop institutional mechanisms to concretely test or enforce these standards of justice, especially from the perspective of women as legal subjects. This has led to polygamy often being understood as an individual right of men, rather than

as a social institution that must be examined for its impact on family structures and power relations within them.¹²

The development of Islamic family law in the modern nation-state era demonstrates a significant shift in understanding polygamy. Many Muslim countries, including Indonesia, no longer view polygamy solely as a normative permissibility, but rather as a legal practice that must be restricted through state regulations. These restrictions are implemented through administrative and substantive requirements, such as court permission and the consent of the first wife. This regulation marks a shift from a private fiqh paradigm to family law as a public domain under state authority.¹³

In the Indonesian context, polygamy is strictly regulated through the Marriage Law and the Compilation of Islamic Law. The requirement for the first wife's permission is not merely an administrative procedure, but a legal instrument to protect women's rights and ensure the principle of justice within the family. However, the practice of polygamy without the first wife's permission still frequently occurs, both through unregistered marriages and manipulation of legal procedures. This phenomenon demonstrates the gap between the formal legality of the state and the normative religious legitimacy perceived by some polygamists.¹⁴

Classical Islamic legal discourse tends to position women as objects of regulation, rather than epistemic subjects. This has implications for the limited scope of women's experiences in the formation of family law norms. Contemporary Islamic feminist studies demonstrate that this inequality is not simply a matter of textual interpretation, but rather a consequence of the masculine and hierarchical structure of Islamic legal knowledge production.¹⁵ Within this structure, the practice of polygamy without the first wife's permission is often normalized through normative arguments that ignore relational and contextual dimensions.

The debate over polygamy also highlights the tension between religious and state authorities. The state, through family law, seeks to restrict polygamy in the interests of social justice and citizen protection. However, non-state religious authorities often view these restrictions as interference with God's law. This tension creates a gray area that polygamists exploit to evade formal regulation while still claiming religious legitimacy.¹⁶

Thus, the discussion of polygamy needs to be placed within a broader framework, namely as part of the epistemological problems of contemporary Islamic law. This approach allows for analysis that goes beyond the normative-dogmatic level, but also touches on the historical, social, and political dimensions of the formation of family law. This is where the

¹² Taufik Hidayatulloh, "Navigating Contemporary Islamic Reason: An Epistemological Analysis of Mohammed Arkoun," *Jurnal Pemikiran Islam* 4, no. 1 (June 30, 2024): 1–18, doi:10.22373/jpi.v4i1.23080.

¹³ K Ali, *Marriage and Slavery in Early Islam* (Massachusetts: Harvard University Press, 2010).

¹⁴ RM Feener and ME Cammack, "Islamic Law in Contemporary Indonesia: Ideas and Institutions," *Cir.Nii.Ac.Jp* (Harvard Law School, 2007), <https://cir.nii.ac.jp/crid/1130000797890203520>.

¹⁵ Mala. Htun and S. Laurel. Weldon, *The Logics of Gender Justice : State Action on Women's Rights around the World* (Cambridge: Cambridge University Press, 2018).

¹⁶ Shaheen Sardar Ali, "Contextualizing Family Law Reform and Plural Legalities in Postcolonial Pakistan," in *Changing God's Law: The Dynamics of Middle Eastern Family Law*, ed. Nadjma Yassari (Abingdon: Routledge, 2016), 34–67, doi:10.4324/9781315571232-4.

relevance of a critical approach like that developed by Mohammed Arkoun becomes significant, as it opens up space to question established epistemic assumptions.

Therefore, the conceptual foundation for understanding polygamy as a legal institution lies at the intersection of religious norms, state regulations, and demands for social justice. By mapping the tension between legality and legitimacy, this discussion prepares the analytical foundation for the epistemological critique that will be developed in the following sub-chapters, particularly through the perspective of Mohammed Arkoun's critique of Islamic reason.

The Legitimacy of Polygamy and the Problem of Justice: Tensions between Text, Authority, and Social Reality

From Mohammed Arkoun's perspective, this condition reflects the dominance of orthodox reasoning in Islamic thought, a way of thinking that closes off space for critical inquiry into the epistemological foundations of Islamic law. Arkoun asserts that many aspects of the Islamic legal tradition have undergone a process of sacralization, in which the products of human thought including fiqh treated as if identical to the revelation itself. In the context of polygamy, this sacralization is seen when the classical interpretation of the permissibility of polygamy is used as unquestionable normative legitimacy, even though its practice contradicts the principles of substantive justice and the protection of rights in contemporary law.

Furthermore, Arkoun introduced the concept of *l'impensé* (the unthinkable) and *l'impensable* (the unthinkable) to explain how the Islamic scientific tradition limits the space for discourse. In the issue of polygamy without the permission of the first wife, women's subjective experiences such as injustice, psychological harm, and social marginalization often fall into areas unthinkable within normative Islamic legal constructions. Fiqh discourse focuses more on the husband's formal requirements (financial capacity and normative justice), while the voice and experience of the first wife are rarely central to epistemological considerations.

On the other hand, state laws requiring the first wife's permission are often viewed as secular intervention into religious law. This view reinforces the dichotomy between Islamic law and state law, as if they exist in two opposing epistemological realms. However, Arkoun's approach encourages a rereading of this relationship by viewing state law as part of the historical effort of Muslims to realize the ethical values of revelation within a specific social context. Thus, the requirement for the first wife's permission can be understood not as a rejection of Islamic law, but as a form of actualizing the principle of justice in a modern context.

Within this framework, the legality of polygamy cannot be separated from the question of epistemological legitimacy. When a practice is deemed religiously legitimate but illegal under state law, questions arise not only about legal compliance but also about the source of the knowledge authority used to justify the practice. Arkoun invites the question: whose knowledge is the basis for legitimacy? Whose traditions are prioritized? And whose experiences are ignored?

These questions become even more relevant when we consider that classical fiqh emerged in a patriarchal social context very different from contemporary conditions. However, this difference in context is often not recognized epistemologically. Fiqh is treated as an ahistorical normative system, even though it is the result of human ijtihad bound to a specific time and place. In the issue of polygamy, this ahistoricity contributes to the justification of polygamy without the permission of the first wife, while ignoring changes in family structure, gender relations, and awareness of human rights.

Arkoun's approach also highlights the importance of interdisciplinarity in the study of Islamic law. He argues that Islamic law cannot be adequately understood without incorporating anthropological, sociological, and historical perspectives. In the context of polygamy without the first wife's permission, an interdisciplinary approach opens up space to understand the social and psychological impacts of the practice, which are often not accommodated within the framework of normative fiqh. Thus, the legitimacy of a legal practice is measured not only by its conformity to the text but also by its impact on human dignity and well-being.¹⁷

Furthermore, Arkoun's epistemological critique challenges the tendency toward normative reductionism in Islamic family law. This reductionism is evident when the complexity of family relations is reduced to fulfilling the formal requirements of polygamy, without considering the power relations and structural inequalities between husband and wife. Under these circumstances, the first wife's consent is often treated as an administrative formality, rather than as an expression of free will that must be substantively protected.

Using Arkoun's perspective, polygamy without the first wife's permission can be read as a symptom of the failure of contemporary Islamic law to integrate the ethical dimension of revelation with social reality. This failure is not merely a normative issue, but rather an epistemological one: how Islamic law is understood, taught, and legitimized. As long as fiqh is treated as a closed system immune to criticism, practices that harm certain parties will continue to be reproduced under the guise of religious legitimacy.

Therefore, this sub-chapter emphasizes that the issue of polygamy without the first wife's permission cannot be resolved simply by tightening regulations or strengthening legal sanctions.¹⁸ What is needed is a rethinking of the epistemological framework of Islamic law itself, as proposed by Mohammed Arkoun. This rethinking opens up space for a reinterpretation of Islamic family law that is more contextual, just, and responsive to women's social experiences.

Thus, the debate over the legality and legitimacy of polygamy without the first wife's permission becomes a gateway to a broader critique of contemporary Islamic legal reasoning. Through Arkoun's perspective, this article positions the issue not as a mere individual aberration, but as a reflection of the knowledge structures that shape contemporary Islamic family law.

¹⁷ Mohammed Arkoun and Robert D. Lee, *Rethinking Islam* (New York: Routledge, 2019), doi:10.4324/9780429304651.

¹⁸ Ziba Mirhosseini, Mulki Al-Sharmani, and Jana Rumminger, *Men in Charge? Rethinking Authority in Muslim Legal Tradition* (New York City: Simon and Schuster, 2015).

Mohammed Arkoun's Epistemological Critique of Islamic Law: Rereading Polygamy as "The Unthinkable"

From Legality to Legitimacy: Epistemic Issues in Islamic Family Law

In contemporary Islamic family law practice, particularly in Indonesia, the legality of polygamy is often determined through compliance with administrative procedures: the first wife's permission, a court ruling, and specific reasons justified by state law. However, behind this legal structure lies a normative-religious legitimacy that still refers to classical arguments regarding the permissibility of polygamy. When polygamy is practiced without the first wife's permission, the perpetrators often claim religious legitimacy by directly referring to the Quranic text and classical Islamic jurisprudence, while negating state legal provisions as merely administrative regulations.¹⁹

Arkoun calls this pattern a symptom of epistemic reduction, namely the narrowing of religious thinking to a single layer of knowledge considered final and sacred. In *Rethinking Islam*, Arkoun asserts that Islamic law is often understood as an ahistorical normative system, whereas it is in fact the result of specific historical, political, and power relations processes.²⁰ Thus, the conflict between legality and legitimacy in cases of polygamy without the first wife's permission is not merely a matter of legal violation, but also a reflection of the epistemological tension between classical Islamic jurisprudence and the demands of modern legal justice.

Polygamy as L'Impensé in Contemporary Islamic Family Law

Arkoun's key concept that is relevant in reading this issue is *l'impensé* (the unthinkable). In many Muslim societies, polygamy is positioned as a given: its permissibility is considered final, while modern restrictions are seen as external interventions against the Shari'a. As a result, certain aspects of polygamy like first wife's consent, power relations in the household, and psychosocial impacts on women and children often not part of serious reflection on Islamic law.²¹

From Arkoun's perspective, this closedness is not accidental, but rather the result of the sacralization of legal tradition. Family jurisprudence, including the rule of polygamy, is treated as a divine product nearly immune to criticism, even though it is actually an intellectual construct of jurists within a specific socio-political context. Contemporary historical studies show that interpretations of polygamy are heavily influenced by the patriarchal structure of pre-modern societies and the importance of social stability at the time.²²

¹⁹ L Sukrizal Watoni et al., "A Literature Study on Polygamy Practices in the Context of Islamic Law and Indonesian Legal Framework," *Journal of Islamic Religious Studies* 2, no. 2 (May 31, 2025): 225–33, <https://www.journal.foramadenglishfoundation.org/index.php/Jirs/article/view/115>.

²⁰ Arkoun and Lee, *Rethinking Islam*.

²¹ Asma Sayeed, "Gender and Legal Authority: An Examination of Early Juristic Opposition to Women's Hadith Transmission," *Islamic Law and Society* 16, no. 2 (2009): 115–50, doi:10.1163/156851909X461681.

²² Ali, "Contextualizing Family Law Reform and Plural Legalities in Postcolonial Pakistan."

Using Arkoun's approach, polygamy without the first wife's permission can be read as a practice at the intersection of text, history, and power. When the first wife's consent is ignored, what occurs is not only a violation of positive law but also a denial of the ethical dimension inherent in Islamic principles of justice. However, this ethical dimension is often not explicitly articulated due to the dominance of legalistic interpretations.²³

Critique of the Sanctification of Fiqh and the Authority of Interpretation

One of Arkoun's key contributions to Islamic legal studies is his critique of the authority of a single interpretation. He rejects the claim that one school of thought or one fiqh tradition holds a monopoly on truth in understanding religious texts. In the context of polygamy, claims of permissibility are often based on a literal interpretation of Surah an-Nisa' [4]:3, without allowing for broader historical and ethical readings.²⁴

Contemporary studies in the Qur'an and Islamic law indicate that the verses on polygamy were revealed in the context of protecting women and orphans in the aftermath of conflict, not as a legitimate endorsement of polygamous practices without ethical boundaries.²⁵ However, this contextual approach is often marginalized in family law discourse dominated by normative-legalistic logic.

Arkoun calls this process the closure of meaning, where religious texts are reduced to sources of legal legitimacy without critical dialogue with social reality. Under these conditions, polygamy without the first wife's permission can continue to be symbolically reproduced as a religiously legitimate male right, despite contradicting the principles of substantive justice upheld by state law and contemporary Islamic ethics.²⁶

Towards the Reconstruction of the Epistemology of Islamic Family Law

Thus, Arkoun's approach does not stop at critique but also paves the way for a reconstruction of the epistemology of Islamic family law. This reconstruction demands a shift from a normative-textual paradigm to a critical-interdisciplinary paradigm involving history, anthropology, and social ethics. Within this framework, the first wife's consent is no longer understood merely as an administrative requirement but as a manifestation of the principles of justice and reciprocity in Muslim family relations.²⁷

Several recent studies have shown that family law reforms in various Muslim countries are moving toward strengthening women's positions through strict restrictions on polygamy, even making it practically impossible.²⁸ This approach aligns with Arkoun's idea of the need to reopen previously unthinkable areas of Islamic law, namely the ethical and humanitarian dimensions that have been marginalized by legalistic logic.

²³ Hussein Ali Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa," *American Ethnologist* 37, no. 1 (February 28, 2010): 2–18, doi:10.1111/j.1548-1425.2010.01238.x.

²⁴ Arkoun and Lee, *Rethinking Islam*.

²⁵ Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa."

²⁶ Welchman, *Women and Muslim Family Laws in Arab States : A Comparative Overview of Textual Development and Advocacy*.

²⁷ Sayeed, "Gender and Legal Authority: An Examination of Early Juristic Opposition to Women's Hadīth Transmission."

²⁸ Welchman, *Women and Muslim Family Laws in Arab States : A Comparative Overview of Textual Development and Advocacy*.

By examining polygamy without the first wife's permission through Arkoun's epistemological critique, this article asserts that the issue is not simply a violation of positive law, but also a symptom of a crisis in Islamic legal reasoning that has not yet fully reconciled with modernity, gender justice, and social complexity. Therefore, reforming Islamic family law requires the courage to critique its epistemic foundations, not simply revising its rules.

Conclusion

This study demonstrates that polygamy without the first wife's permission cannot be adequately explained within the framework of formal legality or classical normative jurisprudence alone. The persistent tension between legality and religious legitimacy reveals not merely a regulatory problem, but a deeper epistemological structure that continues to shape Islamic family law discourse. The main theoretical contribution of this article lies in repositioning polygamy from a doctrinal-legal issue into an epistemological problem of Islamic legal reasoning. By employing Mohammed Arkoun's critique, this study shows that the persistence of polygamy without the first wife's consent is sustained by the sacralization of *fiqh*, the closure of interpretive authority, and the exclusion of ethical and social experience from legal knowledge production. In this sense, polygamy operates as a form of *l'impensé*—not because it is absent from discourse, but because its ethical, social, and power dimensions are systematically rendered unthinkable within dominant legal reasoning.

Conceptually, this article contributes a new analytical framework for Islamic family law by introducing an epistemological reading of legal practices, in which the distinction between revelation, interpretation, and institutionalized law becomes central. This framework allows Islamic law to be examined not as a closed normative system, but as a historically constructed field of knowledge that is always open to critique, revision, and ethical reorientation. On this basis, the article argues that the legitimacy of polygamy without the first wife's permission is increasingly untenable, not only legally but also epistemologically. Arkoun's critique makes visible that such justification reflects the continuation of orthodox reasoning rather than a genuine commitment to the ethical objectives (*maqāṣid*) of Islamic law. Therefore, this study maintains that reform in Islamic family law cannot be confined to regulatory or procedural adjustments alone. What is required is an epistemic shift: a transformation in how religious texts, legal tradition, and authority are understood and legitimized. By opening Islamic legal studies to epistemological critique, this article offers a theoretical pathway toward a more reflexive, ethical, and socially responsive conception of Islamic family law.

References

- Agrama, Hussein Ali. "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa." *American Ethnologist* 37, no. 1 (February 28, 2010): 2–18. doi:10.1111/j.1548-1425.2010.01238.x.
- Ali, K. *Marriage and Slavery in Early Islam*. Massachusetts: Harvard University Press, 2010.
- Ali, Shaheen Sardar. "Contextualizing Family Law Reform and Plural Legalities in Postcolonial Pakistan." In *Changing God's Law: The Dynamics of Middle Eastern Family Law*,

- edited by Nadjma Yassari, 34–67. Abingdon: Routledge, 2016. doi:10.4324/9781315571232-4.
- An-Naim, Abdullahi Ahmed. *Decolonizing Human Rights*. Cambridge: Cambridge University Press, 2021.
- Arkoun, Mohammed, and Robert D. Lee. *Rethinking Islam*. New York: Routledge, 2019. doi:10.4324/9780429304651.
- Barlas, A. *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an*. Texas: University of Texas Press, 2019.
- Butt, Simon., and Timothy. Lindsey. *The Constitution of Indonesia : A Contextual Analysis*. London: Bloomsbury Publishing, 2012. https://books.google.com/books/about/The_Constitution_of_Indonesia.html?hl=id&id=7JV6BAAAQBAJ.
- Feener, RM, and ME Cammack. “Islamic Law in Contemporary Indonesia: Ideas and Institutions.” *Cir.Nii.Ac.Jp*. Harvard Law School, 2007. <https://cir.nii.ac.jp/crid/1130000797890203520>.
- Feener, RM, ME Cammack - (No Title), and undefined 2007. *Islamic Law in Contemporary Indonesia: Ideas and Institutions*. *Cir.Nii.Ac.Jp*. Cambridge: Cambridge University Press, 2021. <https://cir.nii.ac.jp/crid/1130000797890203520>.
- Hallaq, Wael. “ONE. ‘Rethinking the Islamic Tradition’: A Conceptual Framework.” In *Reforming Modernity: Ethics and the New Human in the Philosophy of Abdurrahman Taha*, 33–76. New York: Columbia University Press, 2019. doi:10.7312/hall19388-004.
- Hidayatulloh, Taufik. “Navigating Contemporary Islamic Reason: An Epistemological Analysis of Mohammed Arkoun.” *Jurnal Pemikiran Islam* 4, no. 1 (June 30, 2024): 1–18. doi:10.22373/jpi.v4i1.23080.
- Htun, Mala., and S. Laurel. Weldon. *The Logics of Gender Justice : State Action on Women's Rights around the World*. Cambridge: Cambridge University Press, 2018.
- Kersten, C. *Islam in Indonesia: The Contest for Society, Ideas and Values*. Oxford: Oxford University Press, 2015.
- Mir-Hosseini, Ziba. “Reclaiming Justice: Islamic Feminism, Patriarchal Law, and Popular Revolt in Iran.” *Society* 62, no. 5 (October 27, 2025): 628–38. doi:10.1007/s12115-025-01132-6.
- Mirhosseini, Ziba, Mulki Al-Sharmani, and Jana Rumminger. *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. New York City: Simon and Schuster, 2015.
- Mir-Hosseini, Ziba, Kari Vogt, Lena Larsen, and Christian Moe. “Gender and Equality in Muslim Family Law.” *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition*, January 1, 2013, 1–288. doi:10.35632/ajis.v31i4.1073.
- Nurlaelawati, Euis. “Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts.” *Journal of Islamic Studies* 23, no. 3 (September 1, 2012): 415–18. doi:10.1093/jis/ets031.
- Nurmila, Nina. *Women, Islam and Everyday Life*. Routledge, 2009. doi:10.4324/9780203878545.

- Sayeed, Asma. "Gender and Legal Authority: An Examination of Early Juristic Opposition to Women's Hadīth Transmission." *Islamic Law and Society* 16, no. 2 (2009): 115–50. doi:10.1163/156851909X461681.
- Watoni, L. Sukrizal. "A Literature Study on Polygamy Practices in the Context of Islamic Law and Indonesian Legal Framework." *Journal of Islamic Religious Studies* 2, no. 2 (May 31, 2025): 225–33. <https://www.journal.formadenglishfoundation.org/index.php/Jirs/article/view/115>.
- Welchman, Lynn. *Women and Muslim Family Laws in Arab States : A Comparative Overview of Textual Development and Advocacy*. Amsterdam: Amsterdam University Press, 2007. doi:10.5117/9789053569740.