

# A Comparative Study of the Requirements for Taking a Second Wife According to Muhammad Syahrur and the Compilation of Islamic Law (KHI)

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**Abstract:** This research presents a comparative study of the requirements for taking a second wife in Islamic law, focusing on the perspectives of Muhammad Syahrur and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) in Indonesia. The study examines Syahrur's reformist interpretation, which emphasizes the ethical limitations of polygamy and advocates for monogamy as the ideal, in contrast with the KHI's procedural approach that seeks to regulate polygamy through judicial permission, financial capability, and the consent of the first wife. By analyzing the legal, ethical, and gender-related implications of both perspectives, the research highlights the strengths and limitations of each approach in promoting justice and gender equality. The findings indicate that while the KHI offers a structured framework for regulating polygamy, it fails to address the deeper gender justice concerns raised by Syahrur's reformist views. This study underscores the need for a reassessment of polygamy in Islamic legal systems, with a focus on aligning family law with contemporary values of human dignity, equality, and fairness. The research concludes by suggesting that ongoing dialogue and legal reform are essential to creating a more just and inclusive framework for family law in Muslim societies.

## Research Highlights:

- **Comparative Perspective:** This study compares the classical legal framework of the Compilation of Islamic Law (KHI) with the reformist interpretation of Muhammad Syahrur regarding the requirements for taking a second wife.
- **Focus on Justice and Gender Equality:** Highlights how Syahrur's approach emphasizes ethical limitations and the difficulty of achieving justice in polygamy, promoting monogamy as the ideal.
- **Legal and Human Rights Analysis:** Assesses the implications of both perspectives in terms of legal justification, gender justice, and alignment with contemporary human rights principles.
- **Implications for Legal Reform:** Offers critical insight into how Islamic family law in Indonesia can be reformed to better protect women's rights and uphold the principles of justice.
- **Bridging Tradition and Modernity:** Encourages scholarly dialogue between traditional Islamic legal thought and modern contextual interpretations for more inclusive and equitable outcomes.

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## INTRODUCTION

Polygamy, particularly the practice of taking a second wife, holds significant weight in both Islamic legal discourse and the broader social context of Muslim societies. At the heart of this issue lies a fundamental tension between religious texts, traditional interpretations, modern legal structures, and evolving social values (Turner, 2011). The Qur'an permits a man to marry up to four women under specific conditions, most notably the requirement to deal justly with all wives. This condition, however, is subject to interpretation, and scholars have long debated the meaning and feasibility of "justice" in the practice of polygamy. As a result, the issue of polygamy especially the decision to take a second wife raises complex legal, ethical, and gender-related questions.

From a legal perspective, Islamic jurisprudence (fiqh) has traditionally accepted polygamy as a lawful practice, rooted in specific historical and social contexts, such as wartime conditions that left many women widowed (Al-Krenawi, 2014). However, modern interpretations and contemporary legal systems especially in countries like Indonesia have increasingly sought to regulate polygamy through national laws, such as the Compilation of Islamic Law (KHI). These regulations often require court approval, consent from the first wife, and proof that the husband can fulfill his obligations to all wives fairly. Such stipulations reflect an attempt to reconcile religious allowances with the principles of justice, gender equality, and social stability.

Socially, the issue of polygamy, and particularly the taking of a second wife, often leads to emotional, psychological, and economic consequences within the family. It can affect the welfare of women and children, disrupt family unity, and provoke debates about the role of women in marriage and society (Williams, 2001). In patriarchal cultures where women may have limited legal or economic recourse, polygamy can reinforce systemic inequalities and undermine efforts to promote gender justice. Consequently, discussions about polygamy are not only theological or legal in nature but are deeply intertwined with issues of human rights, feminism, and societal development.

In the modern era, thinkers like Muhammad Syahrur have challenged traditional views by offering reinterpretations of Qur'anic verses on polygamy (Khasanah et al., 2020). He argues that the Qur'an sets ethical boundaries, rather than issuing unconditional permission, and therefore, polygamy should be considered only under rare, justified circumstances. This view emphasizes the importance of contextualizing religious teachings within contemporary realities, especially regarding gender dynamics and individual rights.

A number of scholars have investigated the legal status and regulation of polygamy in Muslim-majority countries, including Indonesia, Malaysia, and Egypt (Razif & Huda, 2017). These studies often highlight the tension between traditional fiqh-based interpretations and the efforts of modern states to regulate polygamy through court systems and legislative instruments such as Indonesia's Compilation of Islamic Law (KHI). For example, research by Nur Rofiah (2015) and Ratna Batara Munti (2017) has shown how legal requirements such as obtaining permission from the first wife and proving financial capability aim to limit the practice and protect women's rights. However, they also note that enforcement remains inconsistent, and patriarchal interpretations often continue to dominate in court decisions.

At the same time, there has been a growing body of work analyzing progressive Islamic thought, particularly the ideas of Muhammad Syahrur and other reformist scholars (Sakirman, 2017). Studies such as those by Abdullah Saeed (2016) and Musdah Mulia (2018) have examined Syahrur's hermeneutical approach, especially his "theory of limits" (nazariyyat al-hudud), which seeks to reinterpret Qur'anic norms within modern contexts. Syahrur argues that polygamy is not an unconditional right but a tightly restricted practice permitted only within specific boundaries aimed at upholding justice. These studies emphasize that Syahrur's reinterpretation provides an alternative framework that prioritizes human dignity and gender equality, offering a basis for legal reform that is still rooted in Islamic principles.

Furthermore, feminist-oriented Islamic scholarship has contributed significantly to the discourse on polygamy. Researchers such as Ziba Mir-Hosseini and Amina Wadud have critiqued the historical interpretations of Islamic texts that have legitimized male-dominated practices, including polygamy. While their focus is often broader than just the issue of a second wife, their work has laid the foundation for gender-sensitive approaches to interpreting Islamic law.

In the Indonesian context, recent research by legal and Islamic studies scholars has also explored public attitudes toward polygamy, its impacts on family dynamics, and how interpretations differ between

urban and rural communities. These sociological studies underline the role of culture, education, and religious leadership in shaping how Islamic teachings are understood and practiced in daily life.

This contrast between a modern hermeneutical approach and a traditional codified legal framework raises important questions: How should the Qur'anic guidance on polygamy be understood today? What are the implications of these differing interpretations for Muslim family law, especially in a pluralistic and democratic society like Indonesia?

By comparing the requirements for a second wife according to Muhammad Syahrur and the Compilation of Islamic Law, this study seeks to explore deeper understandings of Islamic legal reasoning and its application in contemporary society. The research is particularly relevant as discussions on gender justice, legal reform, and religious interpretation continue to evolve in Indonesia and the broader Muslim world.

## METHOD

This research employs a qualitative comparative approach, focusing on the analysis and interpretation of legal texts and scholarly thought. The aim is to understand and compare the legal and ethical requirements for taking a second wife as outlined by Muhammad Syahrur and as stipulated in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) in Indonesia. By examining both primary and secondary sources, this study seeks to uncover the philosophical, theological, and legal foundations behind each perspective and to analyze their implications in the contemporary Islamic legal discourse.

The research method used is library research (*studi pustaka*), which involves collecting and analyzing various textual sources, including books, journal articles, legal documents, and scholarly interpretations (Riyanto et al., 2019). Primary sources include Muhammad Syahrur's original works, such as *Al-Kitab wa Al-Qur'an: Qira'ah Mu'asirah*, where his thoughts on polygamy and the limits of religious law are articulated. These texts are analyzed using hermeneutical methods, with particular attention paid to his theory of limits (*nazariyyat al-hudud*) and how it informs his interpretation of the Qur'anic verses on marriage.

In parallel, the legal provisions regarding polygamy as found in the Compilation of Islamic Law are examined through normative legal analysis (Buchler & Schlatter, 2013). Key articles related to polygamy especially those regulating the requirements for a husband to take a second wife are interpreted in the context of Indonesian family law and Islamic jurisprudence. Relevant laws such as the Marriage Law No. 1 of 1974 are also considered to provide a comprehensive legal framework.

To support the textual analysis, the research also includes a comparative analysis, aiming to identify similarities and differences in the conceptual foundations, requirements, and objectives behind both perspectives (Cho & Lee, 2014). This method allows the researcher to assess how traditional codified law aligns or contrasts with the reformist and contextual approach proposed by Syahrur.

Furthermore, the study involves the use of thematic analysis to categorize key themes such as justice, fairness, consent, and social responsibility, which are central to both Syahrur's and the KHI's approaches to polygamy. These themes are critically examined to evaluate how each framework defines and applies them in relation to the practice of taking a second wife (Britzman, 2012).

In sum, this research is descriptive-analytical in nature and does not involve empirical fieldwork (Stepurko et al., 2010). It emphasizes critical textual interpretation and comparative evaluation as the primary tools to explore the legal and ethical dimensions of polygamy in Islamic thought (Syamsuddin, 2018). This methodological approach is appropriate for engaging deeply with classical texts, modern interpretations, and formal legal documents in order to produce a comprehensive and balanced analysis.

## RESULTS AND DISCUSSION

### Results

The findings of this research reveal fundamental differences in how the requirements for taking a second wife are conceptualized and applied in the thought of Muhammad Syahrur compared to the legal stipulations of the Compilation of Islamic Law (KHI) in Indonesia. While both sources acknowledge the permissibility of polygamy under Islamic law, they diverge significantly in terms of interpretation, intent, and the emphasis placed on justice and social ethics.

According to the Kompilasi Hukum Islam (KHI), polygamy is legally permitted but strictly regulated. A husband who wishes to take a second wife must meet several formal requirements, including: (1) obtaining permission from the religious court, (2) proving the ability to be fair and provide financially for all wives and children, and (3) securing the consent of the first wife. These conditions reflect the Indonesian government's attempt to reconcile Islamic law with national principles of justice and gender equity. The KHI treats polygamy as a legal right within limits, aiming to ensure that the practice does not harm the first wife or lead to family disintegration.

In contrast, Muhammad Syahrur approaches the issue of polygamy from a reformist and contextualist perspective. Utilizing his theory of limits (*nazariyyat al-hudud*), Syahrur reinterprets Qur'anic verses (especially Surah An-Nisa [4]:3) not as unconditional permission but as tightly bounded ethical allowances. He argues that the original context of polygamy in the Qur'an was intended to protect widows and orphans in post-war society, not to promote male privilege. According to Syahrur, polygamy is only permissible when the rights and dignity of all wives can be fully guaranteed a standard that he believes is extremely difficult to meet in modern contexts (Nurohman, 2021). As such, he views monogamy as the ethical norm and polygamy as a highly restricted exception.

The comparative analysis shows that while KHI focuses on procedural legality, Syahrur emphasizes ethical substance and contextual justice (Sumadi, 2017). The KHI operates within a positivist legal framework, establishing practical requirements that can be reviewed in court. Meanwhile, Syahrur calls for a reexamination of scriptural intent, arguing that polygamy in contemporary times should be discouraged unless it fulfills specific humanitarian needs. His approach promotes the use of reason, historical understanding, and gender sensitivity in interpreting Islamic law.

This research also finds that the concept of justice plays a central role in both perspectives, but is defined and applied differently (Cropanzano et al., 2001). In the KHI, justice is primarily demonstrated through material provision and formal consent. In contrast, Syahrur views justice as an inner ethical commitment that must be deeply rooted in fairness, emotional balance, and the absence of harm criteria he believes are rarely achievable.

### **Comparative Analysis: Legal Justification, Human Rights, and Gender Perspective**

The issue of polygamy, particularly the requirements for taking a second wife, is a subject of significant debate within Islamic legal discourse. The Compilation of Islamic Law (KHI) bases its legal justification for polygamy on classical Islamic jurisprudence (*fiqh*), interpreting the Qur'anic verse in Surah An-Nisa [4]:3 as a legal allowance for men to marry up to four wives, provided they can act justly. The KHI provides procedural safeguards by requiring husbands to obtain permission from the religious court, demonstrate financial capability, and gain consent from existing wives. This reflects a legal positivist approach where polygamy is seen as a permissible right that must be regulated rather than prohibited (March, 2011).

In contrast, Muhammad Syahrur offers a radically different legal justification. Through his "theory of limits" (*nazariyyat al-hudud*), he interprets polygamy not as a permanent legal right but as a limited allowance bound by strict ethical conditions. He argues that the Qur'anic verse was revealed in a historical context marked by war and the need to care for widows and orphans (Haleem & Haleem, 2010). Thus, polygamy was intended as a humanitarian measure not a universal marital model. Syahrur's legal reasoning is grounded in contextual, ethical, and *maqāṣid al-sharī'ah* (objectives of Islamic law) principles, emphasizing justice and social welfare over rigid textualism.

The KHI attempts to integrate elements of human rights by imposing regulations intended to prevent harm, such as the requirement of court permission and spousal consent (Alfitri, 2020). However, critics argue that the KHI still treats polygamy as a male privilege, and its enforcement mechanisms often fall short of protecting women's full rights. While the procedural safeguards are a step toward human rights protection, they are not always effective in practice, particularly in patriarchal cultural contexts (Bond, 2003).

In comparison, Syahrur's view aligns more closely with modern human rights discourse. He places strong emphasis on the individual dignity and emotional well-being of women, asserting that polygamy is only permissible if absolute justice can be achieved — an ideal he believes is nearly impossible. This stance reflects a rights-based approach that centers the experience and welfare of women, and implicitly supports monogamy as the ethically superior model in contemporary society.

From a gender perspective, the KHI operates within a patriarchal framework that, while regulated, still institutionalizes male dominance in marital relationships (Tsitsishvili, 2006). The assumption that men

may initiate polygamy, even with restrictions, reflects a gender hierarchy rooted in traditional interpretations of male authority and guardianship.

On the other hand, Syahrur's interpretation offers a more egalitarian gender perspective (Fitri et al., 2021). He challenges the classical juristic assumption that men inherently have a greater right to multiple marriages and insists that the Qur'anic notion of justice should apply equally to all genders. His reinterpretation calls for a reevaluation of male privilege and proposes a gender-sensitive understanding of Islamic texts. By questioning the fairness and viability of polygamy in modern society, Syahrur provides space for Islamic law to evolve toward gender justice and equality.

### **Strengths and Criticisms of Each Perspective**

One of the main strengths of the KHI lies in its function as a codified legal instrument within the Indonesian legal system. It provides a clear, structured, and enforceable legal framework that regulates polygamy and aims to prevent arbitrary practices (Bailey & Kaufman, 2010). By requiring judicial approval, proof of financial capacity, and the consent of the first wife, the KHI introduces procedural safeguards that can be monitored by courts. These requirements are significant in promoting legal accountability and attempting to uphold a degree of fairness in polygamous marriages.

Additionally, the KHI serves as a compromise between religious tradition and state governance, attempting to balance Islamic jurisprudence with national principles such as justice, social harmony, and the protection of women's rights. Its implementation reflects the state's effort to moderate polygamy rather than encourage or abolish it outright.

Despite its strengths, the KHI faces several criticisms. First, its approach remains patriarchal, granting men the right to initiate polygamy while expecting women to comply or prove harm. The emphasis on formal consent and financial capacity does not always translate into emotional or psychological justice for women. Furthermore, enforcement is inconsistent, and in practice, many polygamous marriages still occur without proper legal procedures, undermining the protective intent of the KHI.

Another criticism is that the KHI tends to prioritize procedural over substantive justice. It assumes that fairness can be achieved through external regulations, while overlooking deeper ethical questions regarding gender equality, emotional well-being, and the changing dynamics of modern family life.

Syahrur's interpretation offers a number of progressive strengths. His approach is grounded in contextual ethics and the objectives of Islamic law (*maqāsid al-sharī'ah*), prioritizing human dignity, justice, and social welfare (Ibrahim et al., 2019). By applying his theory of limits (*nazariyyat al-hudud*), he views polygamy not as an unrestricted right but as a tightly bounded exception meant to address specific humanitarian needs particularly the welfare of widows and orphans.

Syahrur's perspective is particularly strong from a human rights and gender justice standpoint. He questions the viability of true justice in polygamous relationships and contends that the ethical demands of fairness are extremely difficult, if not impossible, to meet in modern society. Thus, he effectively promotes monogamy as the ideal, aligning Islamic teachings with contemporary values of equality and mutual respect.

However, Syahrur's approach is not without criticism. His reinterpretation is considered controversial and is often rejected by traditional scholars who argue that it undermines classical jurisprudence. His method, which relies heavily on contextual reasoning and ethical hermeneutics, is sometimes seen as too subjective or detached from authoritative *fiqh* traditions (Akbar, 2021).

Moreover, critics argue that Syahrur's strict ethical conditions, while noble, may not offer practical legal solutions in communities where polygamy is socially and culturally entrenched. His theory may also be difficult to implement in formal legal systems, as it relies more on moral reasoning than codified regulations.

### **Implications**

The comparative analysis between Muhammad Syahrur's reformist interpretation and the Compilation of Islamic Law (KHI) on the requirements for a second wife reveals several important implications, both theoretically and practically for Islamic legal development, gender justice, and policy formulation in Muslim-majority societies, particularly Indonesia.

This research highlights the dynamic and interpretive nature of Islamic law, especially in responding to contemporary social realities. Muhammad Syahrur's contextual and ethical approach encourages scholars to reexamine traditional rulings through the lens of modern values such as justice,

equality, and human dignity. His view challenges the rigid application of classical jurisprudence and promotes a more progressive, human-centered understanding of Islamic texts (Sheibani, 2011). This has implications for the broader field of Islamic jurisprudence, inviting renewed *ijtihad* (independent reasoning) and greater engagement with the *maqāṣid al-sharī'ah* (objectives of Islamic law) framework.

The contrast between Syahrur's gender-sensitive interpretation and the KHI's legal formalism underscores the need to prioritize women's lived experiences in legal discourse. While the KHI provides regulatory controls, it may not fully address the emotional, psychological, and social impact of polygamy on women. In contrast, Syahrur's insistence on absolute justice deemed nearly impossible in polygamous arrangements reflects a human rights-based approach that places women's dignity and equality at the center.

These findings suggest a shift is needed from procedural justice to substantive justice, where the goal is not merely compliance with rules but the actual protection and empowerment of vulnerable parties, especially women and children. This has implications for how Islamic family law is taught, interpreted, and applied, particularly in legal reform initiatives.

For Indonesia, where the KHI serves as a key reference in Islamic family law, this research urges critical reflection on the adequacy of existing regulations (Nurlaelawati, 2010). Although the KHI sets conditions for polygamy, its enforcement and interpretation often remain inconsistent, and women's rights may still be subordinated to patriarchal norms. The study suggests that policy reform should not only strengthen procedural requirements but also integrate ethical and gender-justice principles drawn from alternative interpretations like Syahrur's.

This could include revising court procedures to ensure women's voices are more fully heard, enhancing education for judges on gender-sensitive interpretations of Islamic law, and promoting public awareness about the ethical challenges of polygamy in modern contexts. Moreover, incorporating progressive scholarly views into public discourse may open the door for pluralism and reform within Indonesia's legal system.

Lastly, the study contributes to ongoing dialogue between conservative and reformist camps within the Muslim community. By presenting both the classical legal perspective (KHI) and the modernist approach (Syahrur), the research encourages constructive engagement rather than polarization. It highlights the importance of dialogue that respects tradition while remaining responsive to evolving social needs and values.

## CONCLUSION

This research has explored the comparative perspectives of Muhammad Syahrur and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) regarding the requirements for taking a second wife within the context of Islamic family law. Both perspectives stem from different interpretative approaches to Islamic texts: the KHI is rooted in classical jurisprudence and institutionalized through national legal mechanisms in Indonesia, while Syahrur represents a contemporary, contextualist, and reformist voice in Islamic legal thought. The KHI emphasizes procedural requirements such as court permission, consent from the first wife, and the ability to provide for multiple families. It seeks to regulate polygamy through administrative and legal safeguards. However, it is often criticized for not sufficiently addressing the emotional and psychological impact of polygamy on women and for maintaining a patriarchal framework that largely favors male interests. In contrast, Muhammad Syahrur challenges traditional allowances for polygamy by interpreting the Qur'anic guidance through a human rights and justice-oriented lens. His theory of limits asserts that polygamy is a restricted, exceptional practice meant to respond to specific humanitarian circumstances and that true justice between wives as required by the Qur'an is nearly impossible to achieve. Syahrur thus effectively positions monogamy as the ethical ideal in the modern era. The comparative analysis reveals that while the KHI provides a functional legal mechanism within Indonesia's Islamic judiciary, it may fall short in addressing the deeper ethical and gender justice concerns that Syahrur raises. His approach, though controversial and not yet widely adopted institutionally, offers a progressive reinterpretation that aligns more closely with contemporary values of equality, dignity, and fairness. Ultimately, this study underscores the need for ongoing dialogue and reform in Islamic family law one that is responsive to changing social contexts, prioritizes justice for all parties, and remains faithful to the spirit of the Qur'an. It calls for a legal and moral reassessment of polygamy in Muslim societies,

encouraging scholars, lawmakers, and communities to critically evaluate existing practices in light of evolving understandings of justice, gender, and human rights.

#### AUTHORS' DECLARATION

##### Authors' Contributions and Responsibilities

The author was fully responsible for every stage of this research, including, formulating the research topic, designing the study, conducting literature review, analyzing data, and writing and editing.

##### Competing Interests

The author declares that there are no competing interests or conflicts of interest in relation to the subject matter, findings, or publication of this research.

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