

**De Jure: Jurnal Hukum dan Syar'iah**

Vol. 15, No. 1, 2023, p. 129-143

ISSN (Print): 2085-1618, ISSN (Online): 2528-1658

DOI: <http://dx.doi.org/10.18860/j-fsh.v15i1.21352>

Available online at <http://ejournal.uin-malang.ac.id/index.php/syariah>

## **Administration Reagent of Aceh Family Law Qanun: Siri Marriage Motives Towards the Legality of Polygyny**

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Received: 2023-05-21	Revised: 2023-06-16	Published: 2023-07-23
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### **Abstract:**

The proposal of qanun on polygyny by the Acehnese elite (executive and legislative) was aimed at the wider community because of the rampant phenomenon of siri marriage. Siri marriage is not prohibited in Aceh, and administrative requirements are even relaxed for ordinary people. This gap raises the question of whether the Acehnese elite proposed qanun polygyny for the benefit of the community or for subjective interests. This article is classified as field research with a qualitative approach. The methodology used is a descriptive-analytical study. The results of the study found that the administration reactor or key factor of the family law *qanun* in Aceh lies in the condition where the administration of polygyny requirements is tightened beyond the provisions of The Compilation of Islamic Law (KHI) and Siri Marriage requirements are loosened under the KHI provisions. The motive was an attempt by Acehnese elites to have their *siri* wives recognized (legality) in Aceh's polygyny *qanun*. This finding can be an input for family law studies to create regulations that are more objective and independent, especially in regions that have special autonomous rights.

**Keywords:** administrative reagents; siri marriages; polygyny; Aceh.

## Introduction

As a region that receives special autonomy from the Government of Indonesia, Aceh is allowed to set its own administrative concept and formulate the consequences of implementing Sharia-based Islamic law. Over time, various qanuns were born in Aceh as a transformative foothold toward the concept of implementing Islamic law massively.<sup>1</sup> Materially legally, Aceh has become a highlight for other regions in Indonesia as a reference model in the implementation of the Islamic Sharia government system. Aceh's success or failure will serve as a benchmark for other regions to undertake a similar format. One of Aceh's most attention-grabbing qanuns in recent times is the draft qanun which discusses siri marriages and polygyny. This discourse was viral in its time (2017), and even various YouTube and social media content often ridiculed that; "If Indonesians want polygyny, then just go to Aceh." The excitement of the proposal of the Qanun Plan that legalized polygyny was getting more apparent, shortly with the results of the Aceh regional elections where Irwandi Yusuf and Nova Iriansyah became Governors and Deputy Governors at that time.<sup>2</sup> The proposal of the qanun draft raises the author's guess, do Acehnese elites have siri wives or are they already polygynous? This is inseparable from the seriousness of the proposal for qanun on polygyny, even though there are many other issues that are more urgent for the government to pay attention to.

Regardless of whether the above allegations are true or not, today Irwandi Yusuf and Nova Iriansyah each have another wife who sticks out to the surface. Unfortunately, the existence of their wives had already gone viral before the qanun related to polygyny was allowed by the central government. Responding to the phenomenon, the chairman of the Ulama Consultative Assembly (MPU) of Aceh denied that the polygyny qanun design was made to find loopholes so that Acehnese officials could practice polygyny. Polygyny is something that is not prohibited in the compilation of Islamic law itself, but as a state based on Pancasila, the rules about polygyny cannot be carried out by all people let alone state officials. As a result, *nikah siri* (unregistered marriage) mushroomed in various corners of Aceh. This has an impact on the loss of various children's rights and the rights of siri wives in case of problems in the future.<sup>3</sup> Before this matter gets worse, then qanun on polygyny comes as the solution.

In other implementations, siri marriages in Aceh clashed with the implementation of state administration. The local KUA (Office of Religious Affairs) and MPU are still often arguing over authority regarding which rules should be prioritized. In the end, KUA must give leeway because Aceh has qanun as the content of the Helsinki MoU agreement accepted by the state. However, apart from the KUA and the Sharia Court, other administrative institutions are not subject to

<sup>1</sup> Maura Pemelie Walidain and Laras Astuti, "Implementasi Qanun Jinayat Dalam Penegakan Hukum Pidana Di Aceh," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 3 (November 29, 2021): 184–93, <https://doi.org/10.18196/ijclc.v2i3.13790>.

<sup>2</sup> Husaidi Husaidi et al., "Pro-Kontra Wacana Pelegalan Poligami Dalam Aturan Daerah (Qanun) Di Tanah Rencong Aceh," *SOURCE: Jurnal Ilmu Komunikasi* 6, no. 2 (October 31, 2020): 149–59, <https://doi.org/10.35308/source.v6i2.2598>.

<sup>3</sup> Dikson T. Yasin, "Menelisik Pesan Sosial Poligami Dalam KHI," *Jurnal Al Himayah* 2, no. 1 (March 1, 2018): 77–96, <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/581>.



the qanun format. School entry requirements in Aceh, for example, still require using a child's birth certificate.<sup>4</sup> The problem is, the certificate will not be obtained if the marriage takes place serially. In the end, the licensing of siri marriages in Aceh was refuted on the basis of the state administration system.

In another condition, the chairman of the Aceh MPU explained that the Aceh qanun was not formed to make it easier for the Acehnese elite to polygyny. The proof is that the requirements for polygyny in Aceh are more severe in the administrative system when compared to national law (KHI). The requirement for polygyny in Aceh does not only discuss the wife's license, but it contains various reports and recommendations including monthly income records. That is, if the nominal income does not reach the threshold of polygyny, then administratively the Acehnese qanun prohibits the person concerned from remarrying.<sup>5</sup> At this level, it is emphasized that the higher a person's position is, the more he can add wives (maximum four).

This administrative position intrigued the author to investigate more. On the one hand, it became one of the reasons for the strengthening of the Aceh qanun, on the other hand, it weakened the existence of the Aceh qanun. The position of this administrative dimension is what the author then terms 'administrative reagent'. That is, administration plays a vital role so that other procedures can change or be carried out. Studies related to nikah siri and Qanun Aceh are not a new discourse, there are already several authors who discuss and even publish them. Zainuddin and Zaki Ulya, in their work, have described in a very structured way how legal certainty is needed in responding to the rise of serial marriage in Aceh.<sup>6</sup> The finding in this work is how marriage registration remains a key aspect even though siri marriage is legalized in Aceh. This work has similarities with the author's title in the context of the existence of *nikah siri* which is associated with the design of qanun on polygyny in Aceh. The difference lies in the focus of the administrative reagent.

Rachel Heath in her journal discusses polygyny in a global context. The findings in the article showed that polygyny statistically had a positive impact in reducing intimate violence against couples.<sup>7</sup> However, this work focuses on Latin America and East Africa, in which it does not discuss Indonesia, especially Aceh. Euis Nurlaelawati in his journal examines how variations in judges' interpretations of the legality of polygyny in Indonesia. The findings in this article show that the judge's decision still allows divorce claims from the wife even though the wife is harmed overall.<sup>8</sup> Although the above work discusses the law of polygyny in Indonesia broadly, it does not discuss Aceh which is the focus of the author's study.

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<sup>4</sup> Wolly Mistiar, "Gagasan Pemikiran Pengaturan Hukuman Cambuk Bagi Pelaku Nikah Siri Dalam Rancangan Qanun Provinsi Aceh," *Humantech: Jurnal Ilmiah Multidisiplin Indonesia* 2, no. 3 (March 15, 2022): 610–16, <https://doi.org/10.32670/ht.v2i3.1483>.

<sup>5</sup> Dr Muhammad Zukhdi, "Transformasi Poligami Dalam Bingkai Syari'at Islam Di Aceh," *TAQNIN: Jurnal Syariah dan Hukum* 2, no. 1 (2020): 15–25, <http://dx.doi.org/10.30821/taqnin.v2i1.7434>.

<sup>6</sup> Zainuddin Zainuddin and Zaki Ulya, "Recording Siri's Marriages In Obtaining Legal Certainty (Reflections on the rise of Siri marriages in Aceh)," *Syariah: Jurnal Hukum dan Pemikiran* 21, no. 1 (March 22, 2021): 1–16, <https://doi.org/10.18592/sjhp.v1i1.3276>.

<sup>7</sup> Rachel Heath, Melissa Hidrobo, and Shalini Roy, "Cash Transfers, Polygamy, and Intimate Partner Violence: Experimental Evidence from Mali," *Journal of Development Economics* 143 (March 1, 2020): 102410, <https://doi.org/10.1016/j.jdeveco.2019.102410>.

<sup>8</sup> Euis Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia," *Hawwa* 18, no. 2–3 (October 28, 2020): 295–324, <https://doi.org/10.1163/15692086-12341380>.

Fadli and Muammar in the study have mapped well how complicated the constellation between national law and qanun in Aceh is.<sup>9</sup> This work has similarities with the author's research in the context of the struggle for authority related to family law in Aceh. As for the difference, if the above work focuses more on the historical record of law and its development, the author's study is more directed at the essence of 'administration' which greatly influences the content of family law qanun in Aceh.

Ridwan Nurdin and Muhammad Ridwansyah in their article also studied the Aceh qanun and its development in legal construction in Aceh. This work discusses in such a way that the Aceh qanun has a vital role and is the main reference for the enforcement of Islamic law in Aceh.<sup>10</sup> However, this work only discusses the Aceh qanun in general, and it does not discuss in detail Islamic family law, especially the discourse of siri marriage and polygyny. Based on some of the works above, after conducting an in-depth exploration of literacy, not a single work has been found that discusses the administrative reagent of the Aceh qanun, or the motives of siri marriage towards the legality of polygyny. This fact shows that this research has novelty value to be studied further. Constricted again, the striking research gap in this article is the focus of administrative reagents as X-factors. A reagent in chemical studies is a substance that plays a role in changing the reaction rate of other substances. In line with that meaning, reagents here have a decisive aspect in formulating the qanun of family law in Aceh.

This article is classified as field research with a qualitative approach. The methodology used is a descriptive analysis study of the phenomenon of family law administration in Aceh in the context of siri marriage and polygyny. The primary sources in this study are the Aceh qanun on Islamic family law, the polygyny qanun design, and the results of interviews with qanun makers (leaders of MPU Aceh). The secondary sources are relevant library data in the form of scientific journals published in the last 5 years. The data verification system and the preparation of research results use a snowball pattern, which is the most important thing following a chain pattern to create more accurate data validation.

## Result and Discussion

### Administrative Reagents

Before discussing further administrative reagents, let's first find out what is administration. The origin of the term administration departs from the English word 'administration'. The administration is also often associated with Dutch, namely '*administratie*'. Speaking of administrative systems, the Netherlands is one of the countries with excellent administrative quality in the world. Learning the history of the Kingdom of Aceh may also entail the exploration of the Leiden Library in the

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<sup>9</sup> Fadli and Muammar, "Rancangan Qanun Hukum Keluarga Aceh Dalam Hirarki Perundang-Undangan Indonesia," *Jurnal Al-Ijtima'iyyah* 5, no. 2 (December 30, 2019): 75–93, <https://doi.org/10.22373/al-ijtima'iyyah.v5i2.5357>.

<sup>10</sup> Ridwan Nurdin and Muhammad Ridwansyah, "Aceh, Qanun and National Law: Study on Legal Development Orientation," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 1 (June 30, 2020): 107–31, <https://doi.org/10.22373/sjhk.v4i1.6416>.



Netherlands.<sup>11</sup> In fact, Acehnese archaeologists admit that Acehnese historical relics are found more in Dutch museums than in Aceh museums themselves.

Historically, the Dutch were colonizers of Indonesia including Aceh. So, it is very reasonable to say that Acehnese artifacts and historical assets were brought to the Netherlands massively. However, what about Aceh's historical assets in its own territory? So many tombs of kings are abandoned. In fact, highly valued manuscripts are not preserved and are endangered due to termites. In terms of the Manuscript in Dayah Tgk. Chiek Tanoh Abe, for example, so many ancient books were written in the 17th to 19th centuries,<sup>12</sup> but the condition of buildings and roads that served as access to the location was unbelievably traditional, having been off the radar of the government.

The above facts show that the Indonesian administrative format is still problematic, especially in Aceh which does not make this orientation an important treasure to be preserved. So considering Dutch as an administrative reference is acceptable because they highly value historical assets and keep them with scientific records. Regardless that the Dutch were colonizers or parties who took Aceh's historical assets, if the Dutch did not bring Aceh's history to its territory, perhaps that history would fade if only Indonesia popularized it. In short, administration in an etymological context is an activity engaged in record-keeping, management, administration, financial management, resource processing, and so on. As for the term, administration is understood as the complexity of collectively carrying out activities in order to achieve certain targets. With regard to the implementation, administration can occur in office correspondence, bank management affairs, business records of business finance, and much more.<sup>13</sup>

In principle, the administration is divided into administration in both the broad sense and the narrow sense. In a narrow sense, administration is an administrative activity such as typing, simple bookkeeping, and correspondence. While administration in a broad context is an administrative activity coupled with a filing system to facilitate access to information for any party in need. As for reagents, taken from the term chemistry where it is a substance that functions as a 'material that causes reactions' in a chemical reaction,<sup>14</sup> In this context, administrative reagents are intended as a key factor by which a particular law can change course. Changes can be pro-legality or nullify and loosen authority. In the case of qanun related to family law in Aceh, especially when it comes to siri marriage and polygyny, the administration has a double movement. One side moves towards the importance of strengthening the implementation of qanun, and the other to the relaxation of qanun implementation because it considers other aspects of benefit.

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<sup>11</sup> Asep Hidayat and Selga Zira Fresh Yani, "Peran Administrasi Pembangunan Desa," *Jurnal Inovasi Penelitian* 3, no. 7 (November 28, 2022): 7091–7100, <https://doi.org/10.47492/jip.v3i7.2215>.

<sup>12</sup> Fakhriati Fakhriati, "Tradisi Intelektual Aceh Di Dayah Tanoh Abee Dan Dayah Ruhul Fata," *Al-Qalam* 20, no. 2 (January 9, 2016): 179–88, <https://doi.org/10.31969/alq.v20i2.185>.

<sup>13</sup> M. Jafar and Sulaiman Sulaiman, "Penataan Administrasi Kependudukan Berbasis Mukim dan Gampong di Provinsi Aceh," *Jurnal Penelitian Hukum De Jure* 18, no. 4 (December 10, 2018): 465–76, <https://doi.org/10.30641/dejure.2018.V18.465-476>.

<sup>14</sup> Adelia Nur Polamolo, Astin Lukum, and Kostiawan Sukamto, "Analisis Miskonsepsi Materi Pereaksi Pembatas Menggunakan Tes Three Tier Multiple Choice," *Jambura Journal of Educational Chemistry* 4, no. 1 (May 10, 2022): 51–56, <https://doi.org/10.34312/jjec.v4i1.13180>.

The phenomenon of reagents of the administration of the Qanun of Family Law in Aceh lies in two concrete examples; *First*, the permissibility of siri marriage in Aceh even though it is contrary to national law. At this stage, the administration is relaxed in favor of the general public. *Secondly*, the administrative requirements for polygyny are made difficult. At this stage, the administration is tightened to avoid the rise of polygyny that is mistargeted by ordinary people. The second point has a lot of controversy, one of which is the allegation of making it difficult for ordinary people but making it easier for Acehnese elites to openly practice polygyny.

Regarding the permissibility of polygyny in the Aceh qanun, according to Lem Faisal, Siri Marriage Qanun clearly says that siri marriage is permissible if the conditions and pillars of marriage are met. Siri marriage is considered detrimental, but it is still applied in Aceh to save administrative service-illiterate people like those in remote areas.<sup>15</sup> According to Lem Faisal, currently, there are still many Muslims in remote areas of Aceh who do not understand the administration related to the management of marriage registration. However, religiously they understand the legal and mandatory requirements of marriage. Therefore, it does not matter if they get married first but the registration follows suit. LHthinks that it does not matter if there is leeway in this context to save the marriage. Furthermore, when the party concerned reports his marriage, the marriage registrar must record it in accordance with applicable procedures.<sup>16</sup> LHconsidered that this was not forcing state staff to follow the Aceh Qanun, but based on Aceh's Special Autonomy Right, it was part of a mutual agreement that must be respected.

Speaking of Islamic studies, it cannot be separated from the primary reference of Muslims. So many verses contain an administrative value in the Qur'an, such as, inter alia, *first*, writing texts that are arguably the most widely explained in the Qur'an when associated with administrative disciplines. The reason is that the Qur'an itself is of materially written texts.<sup>17</sup> The narrative about writing and its urgency is mentioned in surah Al-Qalam: 1, Al-Jasiyah: 29, Al-Qalam: 47, Al-Ankabut: 48, Maryam: 79, Al-Kaht: 109, and many more. The second is finance. In addition to discussing the importance of writing and recording, the Qur'an also examines Islamic financial procedures and mechanisms. Verse 55 of Surah Yusuf, for example, describes how Prophet Joseph offered himself to be the treasurer in charge of financial administration for the king of Egypt. What the Prophet Joseph did was an impulse of revelation that brought benefit to his people.<sup>18</sup> This incident shows that the discussion of the importance of administration in the context of finance has been around in Islam even before Christ.

<sup>15</sup> LH, Interview, 30 April 2022.

<sup>16</sup> Sufrizal, Ulil Azmi, and M. Anzaikhan, "Pro Dan Kontra Usia Perkawinan Pada Undang-Undang Nomor 16 Tahun 2019 Pasca Revisi Undang-Undang Nomor 1 Tahun 1974 Dalam Perspektif Islam," *Jurisprudensi : Jurnal Ilmu Syariah, Perundangan-Undangan Dan Ekonomi Islam* 14, no. 1 (December 31, 2022): 91–103, <https://doi.org/10.32505/jurisprudensi.v14i1.5378>.

<sup>17</sup> Adinda Dewi Asmara et al., "Penerapan Nilai-Nilai Islam Dalam Good Governance Di Indonesia," *Jurnal Mediasosian: Jurnal Ilmu Sosial Dan Administrasi Negara* 6, no. 2 (September 12, 2022): 259–76, <https://doi.org/10.30737/mediasosian.v6i2.3163>.

<sup>18</sup> MA Sofwan Hadi, "Makna Semiotik Kisah Mimpi Raja Dalam Surat Yusuf Ayat 43 – 49: (Analisis Semiotik Charles Sander Peirce)," *An-Nur; Jurnal Studi Islam* 14, no. 1 (June 24, 2022): 44–61, <https://doi.org/10.37252/annur.v14i1.214>.



*Third*, planning in the Qur'an is also discussed in a plural manner. There are times when it mentions the importance of managing planning (strategy) in warfare, there are also those who discuss planning in terms of trade and social government. One of them is in Surah An-Nisa verse 81, which describes how important strategy (planning) is in a decision. Likewise, Surah An-Nisa verse 108 discusses confidential decisions. In today's context, confidential decisions can be analogous to securities, personal documents, and other administrative needs. *Fourth* is the signature. There is explicitly no Quranic verse that mentions the term signature. However, a close narrative can be found in some interpretations. One of them is in Surah Al-Hajj verse 88. The verse mentions that Allah Almighty named Muslims from the past until now.<sup>19</sup> Furthermore, the verse describes the testimony of the naming function that took place. When analogous to administrative development, naming something to be used as evidence (testimony) is another term for 'signature'. The same thing can also be found in verse Ali-Imran 36. Mufasir explained that a wife might give a name to a daughter if the husband did not like it. Information related to 'naming' is a vital part of correspondence in administrative activities. The wisdom taken from the above verse shows that a person's name is very important and must be given as soon as possible.<sup>20</sup> In the modern world, a name is the main identity that is impossible to eliminate. This fact reinforces that Islam is very serious in examining the administrative frame.

### **Siri Marriage Qanun and the Response of MPU Aceh**

Based on the fatwa of MPU Aceh Number: 01 of 2010, Siri marriage entails the presence of a marriage registration officer and is not registered with the District Religious Affairs Office or other legal agencies. Based on the fatwa, in Shara's view, some siri marriages are lawful and some are unlawful; A decent Siri marriage must fulfill all the pillars and the requirement of the marriage, while unacceptable siri marriage fails to conform with the accepted standards as mentioned in the definition of the decent Siri marriage.<sup>21</sup>

Furthermore, in the fatwa, it is affirmed that marriage registration is not a pillar and a legal requirement for marriage. A valid siri marriage certificate must be reported by the bride and groom (husband/wife) to be registered and the marriage registration officer must register it. Furthermore, decent siri marriage registration can take place after the marriage contract is signed within an indefinite time limit and the registrar must facilitate its implementation, while a couple of unauthorized siri marriage needs to be sanctioned. Based on the provisions contained in the MPU fatwa decree, it is understood that Acehese clerics want siri marriage to be recognized by the government. The form of recognition is to continue to register the marriage as long as it fulfills the pillars and conditions of marriage as stipulated in the provisions of Islamic law (Jurisprudence). This provision is certainly very different from what the government expects through applicable laws and regulations where siri marriage is

<sup>19</sup> Izza Royyani and Aziza Kumalasari, "Kritik Wacana 'Allah Perlu Di Bela': Tinjauan Ulang Atas QS. Muhammad Ayat 7 Dan QS. Al-Hajj Ayat 40," *Al-Dzikra: Jurnal Studi Ilmu al-Qur'an dan al-Hadits* 14, no. 2 (December 30, 2020): 313–32, <https://doi.org/10.24042/al-dzikra.v14i2.6307>.

<sup>20</sup> Ahmad Harisul Miftah, "Nikah Tafwidh Dalam Persepektif Hukum Islam," *Syaksia : Jurnal Hukum Perdata Islam* 19, no. 2 (September 22, 2018): 277–90, <https://doi.org/10.37035/syaksia.v19i2.3315>.

<sup>21</sup> Zainuddin and Ulya, "Recording Siri's Marriages In Obtaining Legal Certainty (Reflections on the rise of Siri marriages in Aceh)."

not recognized by the government, and if it takes place as well, the marriage has no legal force.<sup>22</sup>

According to Lem Faisal, siri marriage in MPU is divided into 2, decent and indecent. The former is carried out by the guardian himself but not through KUA. Our understanding is that all marriages that do not go through the state are unlawful and deemed inappropriate. The latter does not involve KUA and is not with the involvement of the guardian of the married. Decent siri marriage faces many conflicts. To be valid, the MPU urges the KUA to take note. LH does not expect the Sharia Court to perform isbat nikah on the condition of an indecent siri marriage. So, siri marriage for which isbat can take place only refers to the lawful or decent one. Within the scope of national law, it is even more relevant in order to protect the family. Even in the Qanun Keluarga Sejahtera, it serves as the foundation, thereby it is relevant. What was initiated by the MPU is not contradictory to national law.<sup>23</sup>

In addition to the term *nikah siri*, there is also another form of illegal marriage. As stated in the fatwa of MPU Aceh number 02 of 2009, illegal marriage, according to the marriage law and applicable regulations is not carried out (registered) in a designated agency. This second form of illegal marriage refers to marriage performed by a woman under *tahkim* system approved by a *muhakkam* serving as a judge not officially appointed by the government.<sup>24</sup> In the implementation of wali Muhakam, LH believes it does not contravene state law simply because there is no qualified wali muhakam in Aceh.

*“We have tried to appoint scholars such as Abu Tumin and Abu Ulem Titi and other seniors but they refuse to be claimed as Wali Muhakam and rather suggest that the community should continue to use its wali nasab. Therefore, it is not contravening because no one wants to position themselves as Wali Muhakam.”*<sup>25</sup>

The answer of the chairman of the MPU Aceh above shows the value of administrative reagents as an alternative. He tried to position the Qanun to be the same as the provisions of the Islamic Family Law of the Prophet's time. However, eliminating the person who serves as the guardian of the muhakam does not administratively contravene the national law prohibiting illegal marriage. LH explained that MPU and its staff always fight the existence of illegal marriages in remote villages in Aceh. Likewise, for those who claim to be *wali muhakam* (unauthorized qadhi), the MPU will ask the authorities in Aceh to arrest them. The arrest is not only the guardian of the muhakam, but all parties involved will be arrested.

<sup>22</sup> Sauqi Noer Firdaus, Fadil Sj, and Moh Thoriquddin, “Dampak Nikah Siri Terhadap Istri Dan Anak Perspektif Maqashid Al-Syari’ah Al-Syathibi (Studi Desa Bangsalsari Kecamatan Bangsalsari Kabupaten Jember),” *Jurnal Al-Ijtimauiyyah* 7, no. 2 (December 30, 2021): 165–94, <https://doi.org/10.22373/al-ijtimauiyyah.v7i2.9726>.

<sup>23</sup> LH, Interview, 30 April 2022.

<sup>24</sup> Ratna Juita, Rusjdi Ali Muhammad, and Imam Jauhari, “Kajian Yuridis Pernikahan Melalui Qadhi Liar (Studi Penelitian di Kabupaten Aceh Besar),” *Syiah Kuala Law Journal* 1, no. 2 (August 15, 2017): 102–22, <https://doi.org/10.24815/sklj.v1i2.8476>.

<sup>25</sup> LH, Interview, 30 April 2022.





So far, it has developed in reverse. It seems that MPU agrees with the phenomenon with *wali muhakam*, the development of the issue that MPU agrees with *nikah siri* even though there are two types of siri marriage, lawful and illegitimate siri marriage. Not all siri marriages are approved by MPU. Therefore, siri marriage recognized by the MPU according to the rules of the Ministry of religious affairs has a wali nasab even though it is not registered in the KUA. According to Lem Faisal, siri marriage is not in Fiqh, but the marriage registered in the Religious Affairs Ministry is. All forms of marriage not registered by KUA are considered siri. Even though valid siri marriage is one that is true marriage in religion but not in front of KUA, the absence of a guardian can also render siri marriage illegal since it fails to abide by religious advice.<sup>26</sup>

Any person from a remote village claiming that he is the guardian of muhakam of which the community can use his services cannot be deemed to be a *wali muhakam*, as MPU in Aceh has disagreed, but he is more as an unauthorized qadhi. Especially in Aceh, there are recognized charismatic scholars, such as, among others, Abu Selimun, Abu Ulhe Titi, Abu Tumin. They were not willing to become *wali muhakam* even though they have been asked by the MPU of Aceh. However, some findings imply that ordinary people in Bayeun are married with the presence of *wali muhakam*. Even though those who claim to be clerics are figures who are not recognized by the MPU of Aceh. According to the MPU of Aceh, the muhakam guardians are self-styled clerics, defined as those who do not have the capacity to and cannot preach, they are not even asked to serve as the imams of the village.<sup>27</sup>

The same is the case with other Aceh regions, such as Selimung. Some say that they are related to Ulama Tanoh Abec. But at the level of clerical meetings, at the sub-district level, and at the provincial level they are never invited. These clerics claim to be ulama, but in reality, they do not have any special standards by official religious institutions in Aceh. In essence, regarding *wali muhakam* in Aceh, there are still many who sell names for various purposes, including economic interests, interests in marrying couples who are not eligible for marriage, and so on. LH said that it was common to see self-styled *wali muhakams* in Aceh who are illiterate, and do not do sholeh deeds, but they wear *peci* on their head, making them look like ulama.

### **The Role of Administration (Marriage Registration) in Minimizing Siri Marriage**

Regarding the discovery of marriages that are not registered in the KUA (siri marriage) and the discovery of marriages with unauthorized Qadhi, data found that this was caused by several factors. *First*, registration can be costly for many people with low incomes. *Second*, many divorces do not go through the judicial channel so they do not have any documents to register marriage. *Third*, because polygyny does

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<sup>26</sup> Dhiauddin Tanjung, Ramadhan Syahmedi Siregar, and Teuku Islahuddin, "Upaya KUA Lhoksukon Aceh Utara Dalam Meminimalisir Problema Nikah Liar," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 9, no. 2 (September 5, 2022): 341–61, <https://doi.org/10.32505/qadha.v9i2.4509>.

<sup>27</sup> LH, Interview, 30 April 2022.

not have permission from the court, it cannot be served by KUA staff. Fourth, the marriage does not have the blessing of parents.<sup>28</sup>

Based on the fatwa of the MPU of Aceh, there are two kinds of marriage registration systems; *First*, the marriage is registered by notifying the Village Head and then by KUA by fulfilling the administrative requirements to obtain a marriage certificate. Both systems of siri marriage involve fulfilling the pillars and conditions of marriage before the marriage is reported to the Shar'iyah Court for determination. The pattern of registration of the first model of marriage is the same as intended by the Compilation of Islamic Law (KHI) and laws and regulations in Indonesia, but the second pattern of registration is intended to ensure that siri marriages taking place in the community are reported to the Syar'iyah Court or Religious Court for *isbat nikah*. Basically, the second pattern also has no problem with the provisions of legislation and the KHI. However, if the siri marriage violates the provisions of the KHI or laws and regulations, then *isbat nikah* certainly cannot be carried out,<sup>29</sup> which is different from Acehese clerics who want the marriage carried out by the community siri to be recognized by the state as long as the marriage fulfills the standard pillars and requirements of marriage that have been set forth based on the opinions of madhab ulama.

In comparison, the provisions of the law that become the juridical basis for the Religious Court to conduct *itsbat nikah* are explained by Article 49 Paragraph (2) number 22 and Article 7 Paragraph (2) and Paragraph (3) letter d of the Compilation of Islamic Law. These two provisions imply that marriages that can be applied for *itsbat* to the Religious Court are restricted to those that took place before the enactment of Law Number 1 of 1974 concerning Marriage. With these restrictions, the Religious Court does not have a legal umbrella to carry out its function optimally to conduct *itsbat nikah*.<sup>30</sup> The solution of siri marriage and illegal marriage automatically occurs due to government administration policies that require child birth certificates. As is known, a child's birth certificate cannot be processed without a parent's marriage book. This has become a public interest to apply for marriage *itsbat* to the Religious Court. Therefore, it is common to see requests for this increasing every time. However, because *itsbat nikah* is needed by the community, the judge of the Religious Court conducts "ijtihad" in violation of these provisions, then grants the request for *itsbat nikah* based on the provisions of Article 7 Paragraph (3) letter e of the Compilation of Islamic Law.

If the marriage requested is not subject to marriage as stipulated in Law No. 1 of 1974 concerning Marriage, the Religious Court will grant the request for marriage even though the marriage was carried out after the enactment of Law No. 1 of 1974 concerning Marriage. In fact, the Compilation of Islamic Law (KHI) is not

<sup>28</sup> Rahmad Mulia, "Persepsi Masyarakat Aceh Utara Terhadap Upaya Pemidanaan 'Qadhi Liar' Menurut Perundang-Undangan," *Ahkamul Ushrah: Jurnal Hukum Keluarga Dan Peradilan Islam* 2, no. 1 (June 15, 2022): 47–67, <https://journal.ar-raniry.ac.id/index.php/ahkamulusrah/article/view/2072>.

<sup>29</sup> Fadhilah Fadhilah, "Dispensasi Kawin Di Mahkamah Syar'iyah Pasca Lahirnya Perma No 5 Tahun 2019," *Shibghah: Journal of Muslim Societies* 3, no. 1 (July 3, 2021): 64–83.

<sup>30</sup> Bukhari Bukhari and Safira Hasriani Putri, "Efektifitas Pelaksanaan Itsbat Nikah Sebagai Upaya Perlindungan Terhadap Istri Di Kabupaten Aceh Utara," *El-Hadhanah: Indonesian Journal Of Family Law And Islamic Law* 2, no. 1 (May 30, 2022): 37–56, <https://doi.org/10.22373/hadhanah.v2i1.1638>.



included in the hierarchy of laws and regulations mentioned in Article 7 of Law Number 10 of 2004 which was later updated with Law number 12 of 2011 concerning the Establishment of Laws and Regulations. Therefore, the determination of marriage itsbat by the Religious Court is nothing more than a policy to fill the legal loophole regarding marriage itsbat for marriages carried out after the enactment of Law Number 1 of 1974 concerning Marriage.<sup>31</sup>

Based on the explanation of the data above, it can be understood that illegal marriages understood by Acehese scholars are basically the same terms as those generally understood by both experts and applicable laws and regulations, namely marriages carried out without following the provisions of registration and other provisions according to regulations. Regarding illegal marriage, the scholars stated that the marriage is legally valid only if it leaves a bad impact on the parties when it is done, especially if there are problems and needs related to administration. To overcome these problems, Acehese scholars expect the registration to take place with officials as long as the marriage performed meets the provisions of harmony and the conditions of marriage stipulated in jurisprudence.

### **Behind Siri Marriage Administration Motives**

The existence of the Polygyny Qanun draft submitted by the Aceh government to the Central Government caused a negative response from many parties. One of them is the allegation that the Aceh government at that time (2019) had a mistress wife with siri status.<sup>32</sup> At first, it may be that Siri's wife is willing to have her existence closed or kept secret, but over time, the effort to be known by the public has obviously attracted the attention of the public, in addition to her status as the wife of Acehese leaders such as the Governor or deputy governor. Regardless of whether the allegations are true or not, reality speaks that the current Governor of Aceh and his Deputy were proven to have another wife after going viral in public before the legality of the qanun was in place.

Qanun Polygyny much heard from social media, according to LH (Chairman of MPU Aceh), is the propaganda from the media or parties unhappy with Islamic law in Aceh. There is no Qanun on Polygyny in Aceh but a Prosperous Family Qanun. In the qanun, there are procedures and requirements for polygyny for Muslims in Aceh. It is not entirely true that Aceh simply allows polygyny to take place, contrary to what people believe that going to Aceh is the solution for those who wish to do polygyny; it is not what the media often tell. The conditions for polygyny in Aceh as stipulated by the Qanun Keluarga Sejahtera are intended to save women from taking the wrong path or losing their rights from their husbands.<sup>33</sup>

LH gave an example, if the door of polygyny is closed, there will be many siri marriages that bring harm. They were legally married in religion, but they are not registered in state records. If the state prohibits civil servants or state officials from polygyny, there will be many cases of siri marriage in Aceh simply because husbands are risking their job when they are discovered to do polygyny under state

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<sup>31</sup> Bing Waluyo, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 1 (April 14, 2020): 193–99, <https://doi.org/10.23887/jmpppkn.v2i1.135>.

<sup>32</sup> Husaidi et al., "Pro-Kontra Wacana Pelegalan Poligami Dalam Aturan Daerah (Qanun) Di Tanah Rencong Aceh."

<sup>33</sup> LH, Interview, 30 April 2022.

registration. This, therefore, may lead to dismissal from their position as civil servants. Conversely, if this practice continues, problems may arise in marriage, where the wife and the children from the siri marriage will not have access to their rights as a wife and children.

They are also not served by the Sharia Court if dealing with divorce. Other issues may also arise, affecting children's administrative affairs. For example, a birth certificate is required later when the child concerned registers for a school, while this birth certificate can only be issued with the presence of the parent's marriage book. When this is the case, Aceh's Special Autonomy Rights serve as a solution for this.<sup>34</sup> Thus, several points were born in the Qanun Keluarga Sejahtera that polygyny in Aceh is allowed under strict conditions that do not conflict with family law in Indonesia. For why polygyny should be opened up in Aceh, LH illustrated it with a condition; If a wife is sick, and her illness hampers her from optimally serving her husband, then she is in an appropriate condition to advise the husband to remarry. This can save both husband and wife instead of one. Divorce will only show that the husband tyrannizes his wife in a way that the husband leaves her when she is in need amidst her sickness. Therefore, polygyny should have its chance, considering that some conditions require it to take place. LH believes that if a wife allows her husband to remarry (polygyny) on fair terms, she will still be loved and cherished. Conversely, if the first wife refuses, even though Islam allows it, disharmony may arise from the practice of polygyny.<sup>35</sup>

In practice, although the MPU of Aceh does not acknowledge that there is a hidden mission of drafting the qanun related to polygyny in Aceh, some believe that the intervention of the Acehnese elite implies that the qanun on polygyny becomes real. The proof is that the qanun on polygyny design has been submitted to the center, but the central government has not realized it, considering the situation of the period that has not been as expected. Moreover, polygamy is not prohibited in Aceh or national law, but what is prohibited is polygyny among state officials simply because it will have an impact on performance efficiency at work. Through special autonomy rights in Aceh, Acehnese elites allegedly tried to cut off that route so that polygyny could be legal without having to relinquish or leave their posts.

The reality on the ground, the problem of polygyny of Aceh's elite is quite concerning. In this article, the author takes two examples, Irwandi Yusuf as the former governor of Aceh and Nova Iriansyah as the former deputy governor and former governor of Aceh as well. Both have problems related to the second wife suspected to be Siri. Interestingly, Irwandi's second wife has gone viral and has become a byword of the Acehnese people. One of them did not respond to the subpoena issued by KPK. There are allegations that he was involved in corruption by having some funds transferred to his account.

Nova Iriansyah's wife is a lecturer at Syahkuala University Banda Aceh. However, his wife initially denied that she had a relationship with the governor

<sup>34</sup> Anthin Lathifah, Briliyan Ernawati, and Anwar Masduki, "Problems with the Islamic Legal System Regarding Child Marriages in Indonesia during the Covid-19 Pandemic Period," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 2, 2022): 155–76, <https://doi.org/10.18326/ijtihad.v22i2.155-176>.

<sup>35</sup> LH, Interview, 30 April 2022.



despite the several children they have. In the end, his siri wife chose to step down from her position as a lecturer. These two examples show that there is a problem with the Acehnese elites in their families. This phenomenon further strengthens that the effort made to bring about the qanun on polygyny began with the status of polygyny that has already occurred. That is, again, the administration plays its role so that someone (Aceh's elite) can trick the system for recognition. This condition is what the author considers an administrative reagent because it can be an x-factor of what stakeholders want.

### Conclusion

The administrative reagent in this article can be seen from the role of administration as an x-factor in various implementations of family law qanun in Aceh. On the one hand, administration acts as a factor that deliberately hinders the implementation of qanun. On the other hand, the administration plays a role in supporting the realization of qanun. The administrative aspect that supports the family qanun that is increasingly strict is the existence of additional rules or requirements for Muslims who wish to practice polygyny in Aceh. The loose administrative aspect (allowing siri marriage) is to help ordinary people who are illegitimate to be able to perform siri marriage before it is recorded in the future. The KUA in Aceh is obliged to record siri marriage as normal marriage under the intervention of MPU Aceh. The reagent of the above administration raises the theory that there is a side motive for the strict rules of polygyny and the relaxation of the permissibility of siri marriage. The motive was an attempt by the Acehnese elites to give their wives recognition (legality) in Aceh's qanun on polygyny. The peculiarity of the qanun administration reagent is evident from the efforts of the MPU of Aceh which makes it difficult for ordinary people to do polygyny and makes it easier for people to do siri marriage under the pretext of administration. In the Compilation of Islamic Law (KHI), polygyny is not easy to take place among Acehnese elites (officials) but easier for ordinary people.

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