

CONSTITUTIONAL COMPLAINT AND POLYGAMY REGULATION: A *SIYĀSAH* *DUSTURIYAH* CRITIQUE IN INDONESIA

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ABSTRACT

In accordance with the Pancasila rule of law, this research analyzes Article 4(2) of Government Regulation No. 45 of 1990, which prohibits female civil servants from becoming second or subsequent wives. This study aims to evaluate the normative and ethical foundations of these regulations and examine the urgency of establishing a constitutionally compliant system to protect civil servants' rights from arbitrary actions and discriminatory

legal provisions. Using a normative legal methodology, this study employs a doctrinal and policy-based approach. The results show that by limiting women's constitutional rights within the family circle and imposing no matching restrictions on men, the law embodies systematic gender-based prejudice. Further evidence from a constitutional policy analysis grounded in the aims of maqāṣid al-sharī'ah indicates that Government Regulation No. 45 of 1990 falls short of supporting the ideals of justice, public interest, and equality as called for in a Pancasila-based rule of law. Furthermore, this research notes the lack of a constitutional complaint channel as a structural flaw in the Indonesian constitutional system that restricts impacted citizens' access to constitutional justice. The research makes the case for regulatory changes grounded in substantive justice. It stresses the need to develop a constitutional complaint mechanism to support an inclusive, ethical, and rights-based legal system. This study finally advances theoretical understanding of the integration of Islamic legal concepts with contemporary constitutionalism to enable justice and equality for all residents.

Keywords: *Siyasah dusturiyah, constitutional complaint, polygamy regulation, Pancasila rule of law, maqāṣid al-sharī'ah*

INTRODUCTION

Indonesia is a country based on the rule of law, with Pancasila as its philosophical foundation and guiding principle for all state policies (Adji Samekto & Natalis, 2024). The values of Pancasila, as enshrined in the Preamble to the 1945 Constitution, serve as the primary reference for any constitutional amendments (Kameo & Prasetyo, 2021). As a country with a Muslim majority, Indonesia accommodates the religious interests of its citizens within the framework of Pancasila.

The exercise of governmental power in Indonesia should be based on the principles of a democratic state as mandated by the Constitution. The Constitution guarantees freedom to practise the religion of one's choice. Islam is the religion and belief of the majority of Indonesians (Akbar, 2022). One of the teachings of Islamic law is marriage. Marriage is a fundamental aspect of forming a happy family (Rizky et al., n.d.). The state is obliged to guarantee and accommodate religious values, such as granting citizens the right to enter into

marriage in accordance with their beliefs (Al-Murshidi, 2024). The Indonesian legal system has consistently incorporated the principles of customary law into its legal framework through the Marriage Law (Alaverdov, 2022).

Law No. 1 of 1974 on Marriage serves as the primary basis for implementing family law in Indonesia. (“Judges’ Consideration in Cancelling Polygamous Marriages in Religious Courts,” 2022) The operationalization of the law on marriage is Government Regulation No. 45 of 1990, which amended Government Regulation No. 10 of 1983. The controversial provision in this regulation is Article 4 (2), which states, “Female civil servants are not permitted to become a second, third, or fourth wife.” This regulatory provision is biased, as it contains discrimination and fails to reflect the principles of equality and justice, thereby undermining the rule of law (Matthews, 2023).

Addressing this issue requires a comprehensive approach that includes a robust legal framework, judicial oversight, and proactive measures to combat both direct and indirect discrimination (Guarnera et al., 2024). Ensuring equality and justice for all parties remains a complex yet essential goal for legal systems worldwide. This provision also fails to reflect the principles of the Pancasila legal system and contradicts Article 28I (2) of the 1945 Constitution of the Republic of Indonesia. This Government Regulation has sparked significant debate in constitutional legal discourse. Normatively, this raises serious questions about the consistency of the regulation with the principles of equality and non-discrimination as guaranteed by Article 28B, paragraph (1), and Article 28I, paragraph (2), of the 1945 Constitution of the Republic of Indonesia. Public demands for governance based on the principles of the rule of law and human rights must be adequately addressed by eliminating discriminatory regulations through legal means. Even ethically problematic rules must be addressed. This disparity in treatment has complex implications for the dignity and rights of women in the context of family and work, particularly within the structure of the state bureaucracy.

In Islamic law, this regulation is considered problematic because it conflicts with the principle of *maqāṣid al-sharī‘ah*, the fundamental goals of Islamic law. These goals encompass the safeguarding of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-‘aql*), lineage (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*) (Taufiqurohman & Fauziah, 2023). Discrimination against female civil servants who aspire to be, or are currently, a second wife infringes upon the principles of justice (*‘adl*) and equality (*musāwāh*). These principles are fundamental components of *siyasah dusturiyah*, or constitutional theory, within the framework of Islam (Narain, 2021). When positive law clashes with Islamic ethical principles and the Constitution, it is essential to conduct

a comprehensive and doctrinal assessment that is integrative in nature to develop a just and effective legal response. As highlighted by Wulandari et al., implementing discriminatory regulations that fail to meet women's constitutional rights poses significant challenges (Wulandari et al., 2025). This shows a failure to comprehend how legal approaches can be modified to attain significant gender equality. Legal rules that unfairly limit women reflect a bias rooted in patriarchy within the bureaucracy and cannot be defended on moral or legal grounds.

This legal issue is not only about the formal validity of a regulation, but also touches more deeply on the essence of substantive justice in a democratic state based on the rule of law. Theoretically, Indonesia has guaranteed its citizens' fundamental rights through its Constitution and has ratified various international human rights instruments. However, in practice, there are no adequate legal instruments to accommodate individual complaints about regulations that are considered to violate their constitutional rights. One of the most crucial gaps in the Indonesian legal system is the absence of a constitutional complaint mechanism. This legal instrument allows citizens to challenge laws or state policies that are contrary to the Constitution directly (Holish & Maharani, 2023). Kuliavets emphasised that the absence of this mechanism is a structural weakness that limits access to justice, especially for marginalised groups such as women (Kuliavets, 2022). The mechanism of constitutional complaint is a legal mechanism that allows citizens to challenge laws or state policies that are contrary to the Constitution directly. This mechanism serves as an essential self-defence tool for citizens to protect their constitutional rights from the actions of state authorities.

To address these normative and structural issues, an evaluative approach that combines positive legal analysis with Islamic legal principles is highly relevant. This approach not only assesses the formal conformity of a regulation with legal provisions but also tests its ethical and spiritual validity through the framework of *siyasah dusturiyah*. *Siyasah dusturiyah* is not merely a theological discourse but a conceptual framework with practical dimensions in evaluating state policies. The legality of a norm cannot be separated from its legitimacy in the face of principles of justice and the common good. State policies must be directed toward achieving the common good and preventing harm (*sad al-zari'ah*). Therefore, the evaluation of Government Regulation No. 45 of 1990 cannot be separated from these principles.

The solution proposed by this study suggests two key strategies. *First*, Government Regulation No. 45 of 1990 is evaluated using the indicator *al-ta'assuf*, a concept in Islamic jurisprudence that assesses the abuse of power

in the exercise of rights. Discriminatory regulations, even if they appear legal, may contain elements of *al-ta'assuf* (abuse of power) if they contradict the intent and purpose of sharia. *Second*, establishing a constitutional complaint mechanism in Indonesia is necessary as a formal instrument to ensure the substantive implementation of constitutional values. This mechanism has proven effective in four countries: Azerbaijan, South Korea, Thailand, and Turkey (Yun, 2020). Constitutional complaints within a country's jurisdiction provide direct legal protection to individuals whose constitutional rights have been violated (Lailam & Andrianti, 2023).

Previous scientific efforts have highlighted various aspects of gender inequality in civil service regulations, but few have systematically used a constitutional policy framework. The central concept underlying this study is the constitutional complaint as a mechanism in democratic legal systems, which is highly relevant for protecting citizens' human rights from discriminatory state actions (Litman, 2022). The origins of this concept stem from the German legal tradition and have been widely adopted in various countries to provide citizens with direct access to challenge violations of constitutional rights by state policies or regulations. In the Indonesian context, the absence of a constitutional complaint mechanism represents a significant gap in the legal system, which has so far failed to guarantee adequate protection of constitutional rights, particularly for vulnerable groups such as female civil servants affected by polygamy regulations.

Previous studies have shown that regulations on polygamy in Indonesia, as stipulated in Law No. 1 of 1974 and Government Regulation No. 45 of 1990, have often been criticised for gender bias and for being contrary to the principle of substantive justice. Research by Wulandari et al emphasises that discriminatory polygamy regulations against women violate human rights principles and contradict Indonesia's ratification of CEDAW (Wulandari et al., 2025). Meanwhile, a study by Marlina Flassy found that both Indonesia and Malaysia exhibit similar patterns of discrimination, prioritising the rights of husbands in the name of religion without providing equal protection for wives (Flassy et al., 2025). On the other hand, Hadi et al. highlighted judicial conservatism in interpreting polygamy, confirming the continued dominance of classical *fiqh* approaches in court rulings (Hadi et al., 2023). Ruth Gaffney-Rhys highlighted international human rights agreements and considered the extent to which child marriage and polygamy violate their provisions (Gaffney-Rhys, 2012). Meanwhile, Theresia Dyah Wirastrri and Stijn Cornelis van Huis focused on 'The second wife: Ambivalences towards state regulation of polygamy in Indonesia' (Wirastrri & van Huis, 2021).

Although there have been several studies on gender inequality in marriage law, previous research has been lacking in its attention to the absence of constitutional complaint mechanisms as legal instruments for correcting *al-ta'assuf* actions and legal products that are contrary to the Constitution and the principles of *maqāsid al-sharī'ah*. Most studies remain focused on normative analysis of legal products and court rulings without offering structural solutions to the limitations of legal access experienced by affected citizens. Furthermore, there has been little research combining a positive legal approach with an Islamic ethical framework, particularly through a *siyasah dusturiyah* study of discriminatory legal products and government actions that fail to reflect the principles of justice, freedom, and equality (Ridwan et al., 2025). It can therefore be concluded that the gap identified in this study is a theoretical one.

This article aims to fill this gap by proposing the integration of two approaches: (1) a normative evaluation of PP No. 45 of 1990 based on indicators of *al-ta'assuf* (abuse of power) in *siyasah dusturiyah*, and (2) advocacy for the establishment of a constitutional complaint mechanism as a legal breakthrough in the Indonesian legal system. Thus, this article not only offers criticism but also concrete solutions to the regulatory discrimination faced by women in the state bureaucracy. This contribution expands the academic discourse, which has so far not extensively addressed the relationship between constitutionalism, the fulfillment of social rights, civil rights, economic rights, and cultural rights.

The conceptual framework of this study combines perspectives from constitutional law, human rights, and *siyasah dusturiyah*. The concept of constitutional complaint is not merely a procedural legal mechanism but also an expression of the principles of substantive justice and the protection of rights in fulfilling the objectives of Islamic law (Bakarbess & Jacob, 2025). This integration enables a more comprehensive analytical framework to evaluate the validity and legitimacy of a legal norm within the context of the Pancasila rule of law (Rohmadi, 2024). The principles of *maslahat* and *sadd al-zarā'i* serve as ethical parameters for assessing the responsiveness of a legal product, thereby providing a strong foundation for this study.

Recent literature reviews also indicate that the practice of constitutional complaints has undergone conceptual expansion in various countries as a form of judicial control over structural injustice. However, in the Indonesian context, this debate remains confined to academic circles. It has not yet entered the realm of legal politics in shaping the legal system for the future (*rechtvorming*). This gap is one of the crucial points that this study seeks to bridge. The integration of constitutional politics and constitutional complaints

offers a unique opportunity to build a more just, responsive, and contextual legal system.

The novelty of this study lies in integrating Islamic ethical principles and modern legal principles to create more just and inclusive regulations. The hypothesis put forward is that Government Regulation No. 45 of 1990 is not only normatively discriminatory but also contains ethical flaws that violate the principles of *maqāṣid al-sharī'ah*, and the absence of a constitutional complaint mechanism reinforces this injustice structurally. The scope of this study is limited to a normative analysis of legal products on polygamous marriage for female civil servants, with a focus on the study between Islamic law based on *maqāṣid al-sharī'ah*, the Pancasila-based constitutional state, and justice and equality in the public sphere. This research is expected to make a significant contribution to the development of contemporary Islamic legal theory and public law reform in Indonesia.

This research contribution seeks to bridge this theoretical gap by combining the principles of *siyasah dusturiyah*, grounded in *maqāṣid al-syarī'ah*, with an analysis of the absence of constitutional complaints within the Indonesian state's constitutional structure. This integration aims to build a stronger theoretical foundation for analyzing and critiquing discriminatory regulations and to promote institutional reforms that ensure justice and equality for all citizens. This approach also strengthens Islam's position as a source of public moral ethics, not only normative-theological but also solution-oriented and constructive in addressing the contemporary challenges of a democratic constitutional state.

METHODS

This type of research is normative (doctrinal), a legal study that emphasizes the application of legal norms and principles, whether through legislation, court decisions, or relevant academic opinions. This approach is appropriate for analyzing the constitutionality and fairness of polygamy regulations for female civil servants within the framework of *siyasah dusturiyah*. The approach used in this study is doctrinal and policy-based (Bodansky et al., 2024), aimed at gaining a deeper understanding of the concept of constitutional complaints and their role in the Indonesian legal system. The normative *shar'i* approach is used to explore the principles of *siyasah dusturiyah* as a tool for analyzing public policy grounded in the rule of law, in accordance with the belief in One God.

The data sources include primary data from legal materials, including legislation (UUD 1945, laws, government regulations) and court decisions. Secondary legal materials include academic literature, scientific journals, and prior research. Data collection techniques include library research, which involves examining legal documents and academic references directly related to the research issue. Descriptive qualitative methods are used to interpret data systematically. Analysis is conducted by comparing positive legal norms with the principles of *siyasah dusturiyah* to assess the conformity of regulations with constitutional justice values and the principles of *maqāṣid al-sharī'ah*.

RESULT AND DISCUSSION

REGULATORY DISPARITIES IN GOVERNMENT REGULATION NO. 45 OF 1990

Article 4 (2) of Government Regulation No. 45 of 1990 states that” PNS wanita tidak diizinkan untuk menjadi istri kedua/ketiga/keempat” (female civil servants are not permitted to become a second, third or fourth wife). This provision is absolute and does not provide any exceptions for female civil servants, unlike the provisions for male civil servants, who are still permitted to practice polygamy under certain conditions (Lakoni et al., 2023). This disparity demonstrates the existence of double standards in the state’s treatment of men and women who are both part of the bureaucratic structure.

These provisions directly result in normative discrimination that is inconsistent with the principle of equality in Article 28D(1) and Article 28I(2) of the 1945 Constitution. Female civil servants are placed in an inferior position because their freedoms and civil status are restricted without fair and proportional legal justification (Rofi’i et al., 2022). This regulation also serves as a basis for government officials to dismiss female civil servants who are known to be second wives, even though the marriage is legally and religiously valid. This situation demonstrates that civil service regulations have exceeded their boundaries.

This study clearly demonstrates that Government Regulation No. 45 of 1990, Article 4, Paragraph (2), is a policy that does not reflect the principle of substantive justice as mandated by the Constitution and the *maqāṣid al-sharī'ah* (Al-Turabi & Auda, 2025). This provision, which absolutely prohibits female civil servants from becoming a second, third, or fourth wife, reflects structural bias against women within the state bureaucracy. Normatively, this policy fails to meet the principles of *al-‘adl* (justice) and *musāwah* (equality)

from the perspective of *siyasah dusturiyah*, and creates systemic barriers to women's constitutional rights.

The analysis of Article 4(2) of Government Regulation of the Republic of Indonesia No. 45 of 1990 from the perspective of the Indonesian Constitution is clear and unequivocally contrary to Article 28D(1) of the 1945 Constitution of the Republic of Indonesia regarding the right to recognition, guarantee, protection, and certainty of fair law, as well as Article 28I(2) of the 1945 Constitution, which states that every person has the right to be free from discriminatory treatment (Narain, 2021). When the state creates legal norms that limit civil law options only for one gender, this violates the principle of equality before the law. The disparity in treatment between male and female civil servants in the context of polygamy is evidence of double standards in civil service regulations.

This was reinforced by an interview with MSQ, a stakeholder and local government official in one region, who stated that the regulation violates the law and infringes upon constitutional rights. This is because civil servants also hold the status of citizens, just as they have the right to vote and be elected. The prohibition against female civil servants being wives in polygamous marriages also violates gender equality because there is unequal treatment in the regulation. The regulation imposes an absolute ban on participation in polygamy, whereas for male civil servants, there is no absolute ban; instead, the prohibition is subject to certain conditions. Therefore, this regulation must be reviewed.¹

However, there are differing perspectives regarding the relevance of regulations prohibiting female civil servants from being wives in polygamous marriages to existing laws and regulations, as well as the fulfillment of the constitutional rights of female civil servants under such rules. According to LMN, a stakeholder and official at the Civil Service and Human Resource Development Agency in one region, noted that such restrictions apply specifically to women, specifically in civil service positions. As for those outside the civil service, there are no such restrictions. The regulation is considered to remain consistent with existing laws and regulations, as it has not yet been repealed. The regulation guarantees the constitutional rights of civil servants. One objective of the regulation is to prevent conflicts of interest in the performance of civil service duties. For example, to prevent workplace conflicts over family matters when a husband serves as a supervisor and his first

¹ MSQ (A Stakeholder and Local Government Official in One Region), in interview with author on 9 March 2025.

and second wives hold subordinate positions. Consequently, there is concern that this could set a poor example for other subordinates in the workplace.²

A legal system that regulates family life with a patriarchal approach risks neglecting the principle of substantive justice for women (Rohmadi, 2024). When the state establishes norms that only restrict certain groups (in this case, women), the state has fallen into the trap of *al-ta'assuf* (abuse of power) in establishing policies. The act of *al-ta'assuf* (abuse of power) cannot be justified under the principles of constitutional politics, especially in the dimensions of protecting honor (*hifz al-'ird*) and family (*hifz al-nasl*).

A study using constitutional political parameters to assess government regulations under Article 4, paragraph (2), of Law No. 45 of 1990 also confirms that this regulation is not in accordance with the principles of Islamic law. Constitutional politics is a conceptual framework within the Islamic legal tradition that serves as the theory of Islamic constitutionalism (Quraishi & Kamali, 2000). This concept originates in Islamic political jurisprudence (*siyasah dusturiyah*), which emphasizes the legitimacy of governance and public policy in accordance with Sharia principles that have distinct ideas of governance and policy. The doctrine of *siyasah dusturiyah* as part of the discipline of Islamic law emphasizes that the purpose of governing a country is to maintain justice (*'adl*), realize the common good (*maṣlahah*), and prevent social harm (*sadd al-dharā'i*).

IMPLICATIONS OF THE DISMISSAL OF FEMALE CIVIL SERVANTS

This study illustrates the discriminatory treatment experienced by several female civil servants who are second wives through court decisions. Among these court decisions are Decision Number 0085/Pdt.G/2019/PA. Sel, Decision 0306/Pdt.G/2017/PA.Gtlo, and Decision 0102/Pdt.G/2016/PA.Dgl, which indicates that the granting of permission for polygamy in these cases is inconsistent with the provisions of Article 4(2) of Government Regulation No. 45 of 1990. This inconsistency is evident from the court proceedings, as in the aforementioned cases, the second prospective wife, who was the subject of the polygamy permit application, was found to be a civil servant. This status is explicitly prohibited under government regulations.

² LMN (A Stakeholder and Official at the Civil Service and Human Resource Development Agency in One Region) in interview with author on 3 February 2025.

The legal facts in the trial revealed that the judge's approval of the polygamy permit was based on the parties' statement declaring their willingness to bear all risks arising from the marriage. The panel of judges in the ruling appeared to disregard the applicability of Article 4(2) of Government Regulation No. 45 of 1990 by imposing the prerequisite that the parties must provide a written commitment to the administrative risks associated with the marriage (Lakoni et al., 2023). This is a small example of the dismissal of a female civil servant without any review process that considers the validity of the marriage under Islamic law or the individual's constitutional right to family life. The administrative action was based solely on Article 4(2) of Government Regulation No. 45 of 1990, which effectively grants personnel management officials absolute authority over civil servants. The substantive provisions of Government Regulation No. 10 of 1983 were amended by Government Regulation No. 45 of 1990, which explicitly prohibits female civil servants (PNS) from becoming a second, third, or fourth wife, whether married to a male civil servant or to a non-civil servant male.

This inconsistency is reflected in the fact that, in these cases, the prospective second wife who was the subject of the polygamy permit application was a civil servant, which is prohibited by law. The findings of this study reveal that judges in approving polygamy permits based their decisions on written statements from the parties involved, in which they expressed their willingness to assume all risks that may arise from the marriage. In this regard, the judges appear to have disregarded the applicability of Article 4(2) of Government Regulation No. 45 of 1990, which requires the parties to provide a written commitment regarding the administrative risks associated with the marriage.

The risks referred to in the statement include the possibility of sanctions, such as dishonorable dismissal from the civil service, as well as the potential annulment of the marriage by the relevant agency or official. Therefore, the applicant and the prospective spouse, in this case a civil servant, must be fully aware of and understand the legal and administrative consequences of the request for permission to practice polygamy they are submitting (Wirastri & van Huis, 2021). This awareness reflects the parties' responsibility for the legal consequences of an action that violates applicable civil service regulations.

The dismissal resulted in loss of livelihood, psychological distress, and social stigmatization of women who were considered moral offenders, even though no criminal or civil law violations had been committed. This situation demonstrates a gap between formal legal principles and the implementation of substantive justice (Indrayanti & Saraswati, 2022). Islamic law requires that every state policy be based on the principle of *maṣlahah* (public interest)

and *dar'u al-mafسادah* (harm). It should be emphasized that the impact of polygamous marriage on women and children depends heavily on the social context, not solely on the structure of the marriage. Under certain conditions, women in polygamous families can still live harmoniously and productively. An absolute ban on polygamous marriage for women is not only disproportionate but also closes the door to dialogue and recognition of social conditions that the law should value.

Legal policies that weaken women's position in the public sphere and increase injustice in the national legal system constitute an act of abuse of power, a concept in constitutional politics that provides an essential jurisprudential basis for evaluating the abuse of state authority. The principle of the rule of law in the context of the Pancasila rule of law can be stated that even though a regulation appears to be legally valid in form, it can still be declared invalid if used to oppress or restrict the rights of citizens, such as Article 4(2) of Government Regulation No. 45 of 1990. This is a clear example of the form *al-ta'assuf* (abuse of power) because it legally sanctions the dismissal of female civil servants who engage in polygamous marriages without providing any room for defense or contextual exceptions. In Islam, polygamy is not absolutely prohibited but is limited by the conditions of justice and moral responsibility of the husband.

ABSENCE OF A CONSTITUTIONAL COMPLAINT MECHANISM

The absence of constitutional complaints in the Indonesian legal system means that women who are victims of discriminatory regulations, such as PP No. 45 of 1990, have no legal channel to express their objections or request a constitutional review of these norms. The Constitutional Court only accepts requests to review laws, not government regulations. On the other hand, administrative courts also lack the authority to review the constitutionality of regulations issued under statutes.

This is a structural problem because it limits access to justice to limited institutional channels. Constitutional complaint mechanisms are an essential feature of modern constitutional states because they provide direct protection of citizens' constitutional rights (Narain, 2021). In countries such as Germany and South Korea, citizens can file constitutional complaints against regulations they believe violate their rights, including administrative regulations. This scheme ensures that the Constitution remains the supreme and dynamic law.

The absence of a constitutional complaint mechanism in the Indonesian legal system further exacerbates this injustice. The political and legal framework for

the future must consider a constitutional complaint mechanism that allows citizens to challenge regulations that infringe upon their constitutional rights directly (Holish & Maharani, 2023). Without such a mechanism, citizens, particularly vulnerable groups such as female civil servants, will become victims of discriminatory government actions. This can occur because administrative courts lack absolute competence and jurisdiction to assess the constitutionality of government regulations. The Constitutional Court, on the other hand, can only review the constitutionality of a law against the 1945 Constitution. This situation creates a structural void in the legal system, leading to the state's failure to address injustice against its citizens.

In the context of comparative law, countries such as Germany and South Korea have implemented constitutional complaints as an effective means of enforcing constitutional rights. The experiences of these countries show that openness to individual complaints against state policies is a sign of a mature democratic state (Wico et al., 2021). This differs from other countries, such as Germany. The German Constitutional Court is one of the few constitutional courts in the world that explicitly has the authority to hear constitutional complaints, as provided for in the Constitution. A well-known example of a constitutional complaint in Germany involves a challenge to the ban on animal slaughter. German Muslims objected to the ban and filed a constitutional complaint with the German Constitutional Court, arguing that it violated the freedom of religion guaranteed by the German Constitution. (Indrayana, 2025; Zoelva, 2012). The German Constitutional Court handles approximately 6,000 to 6,500 constitutional complaints per year. (Indrayana, 2025; Mahkamah Konstitusi Republik Indonesia, n.d.) Such mechanisms not only enhance state accountability but also strengthen legal legitimacy through participatory testing. Nations in the international community have come to recognize that constitutions are not merely texts and formal documents, but must serve as living norms capable of ensuring justice and equality for all citizens.

In the context of *siyasah dusturiyah*, the absence of this mechanism indicates the state's lack of effort to adopt an inclusive and ethical legal system. The principle of *siyasah dusturiyah* demands that the state not only comply with the law but also be responsive to the justice needs of its citizens. Islamic law cannot be enforced through policies that cause hardship (*kharaj*) and do not bring about public benefit. Therefore, discriminatory regulations without constitutional corrective mechanisms constitute a form of legal institutionalization that is ethically and structurally flawed.

REGULATORY EVALUATION FROM THE PERSPECTIVE OF MAQĀSĪD AL-SHARĪ'AH

An analysis of PP No. 45 of 1990 shows that this regulation contradicts *maqāṣid al-sharī'ah* in several aspects. First, from the perspective of *ḥifẓ al-nafs*, the dismissal of female civil servants who are second wives risks depriving them of their livelihood and stability, which are fundamental human rights. Second, from the perspective of *ḥifẓ al-'ird*, there is stigmatization against women who choose polygamous marriage, which is not absolutely prohibited in Islam itself. Third, from the standpoint of *ḥifẓ al-dīn* and *ḥifẓ al-nasl*, there is a disregard for the religious legitimacy of polygamy, which is legally permissible under Islamic law (Ramadhani, 2024).

The principle of *maqāṣid al-Sharī'ah* requires that state policies do not violate the principles of justice and public interest (Shaleh et al., 2025). If a policy results in more harm than good, it is considered invalid under Islamic law. In line with this, the concept *al-ta'assuf* (abuse of power) holds that the exercise of state rights or authority that harms society must be revised or revoked. In this context, such regulations serve as a concrete example of the exercise of administrative legal authority that exceeds the bounds of reasonableness and propriety.

Furthermore, *siyasah dusturiyah* as Islamic constitutional theory provides a relevant evaluative framework for assessing state policies (Quraishi-Landes, 2023). Especially when there is a conflict between formal legality and moral legitimacy, taking into account the parameters of *siyasah dusturiyah*, *mutābaqah* (conformity with sharia), *raf'u al-kḥaraj* (avoidance of hardship), *taḥqīq al-'adālah* (achieving justice), *taḥqīq al-maṣāliḥ wa daf'u al-mafāsīd* (achieving *maslahat* and preventing *al-mafāsīd*), and *al-musāwah* (equality). State authority must be directed toward attaining *maslahat* and upheld in accordance with the principles of justice and egalitarianism. Discriminatory policies cannot be justified within the framework of *siyasah dusturiyah* because they contradict the very purpose of authority, which is to create social justice. Therefore, integrating constitutional politics and modern constitutional values is not only possible but also necessary to develop an ethical and inclusive legal system. Inclusive policies reflect regulations based on *Siyasah Dusturiyah*; in this context, the practice of polygamy for female civil servants or for those involved as polygamous wives is an option that cannot be absolutely restricted, unlike the rules applied to male civil servants.

THE URGENCY OF REGULATORY REFORM AND THE ESTABLISHMENT OF A CONSTITUTIONAL COMPLAINT MECHANISM

The findings of this study emphasize the importance of regulatory reform of Article 4, paragraph (2), of PP No. 45 of 1990, so that it no longer serves as an instrument for legalizing discrimination against women. This reform should focus on removing absolute prohibitions and replacing them with policies grounded in conditions and the principles of substantive justice. Fair regulations should take into account the objective conditions of each individual, including the motivations and social impacts of polygamy practices. The link between gender discrimination and the need for regulatory reform is understood as a consequence of adherence to Pancasila and human rights, which uphold equality in the right to life, family, and religion, as well as in career opportunities, thereby ensuring that women earn a decent income comparable to that of men.

As a country that upholds human rights, Indonesia needs to establish a constitutional complaint mechanism accessible to individual citizens to challenge norms that violate their constitutional rights (Glidden, 2023). This mechanism will strengthen the system of checks and balances in law enforcement and make the constitution a living instrument in ensuring justice for all citizens, including vulnerable groups such as women. This institutional reform will also bring Indonesia closer to a progressive, participatory rule-of-law model.

This study confirms that regulations that do not consider *maqāṣid al-sharī'ah* and do not provide legal means for constitutional correction will perpetuate structural injustice (Alias et al., 2024). *Siyasah dusturiyah* provides an ethical and normative framework for evaluating the legality and morality of state policies, and encourages legal reform towards a more just and dignified direction.

Efforts to consider all aspects of constitutional politics and constitutionalism toward the ideal of a state governed by law clearly indicate that regulations that fail to take into account the principles of *maqāṣid al-sharī'ah* and do not provide a means of resolution through constitutional complaints are problematic from a legal, moral, and institutional perspective (Faizin & Jafar, 2024). Such regulations serve as instruments of legitimizing discrimination and fail to reflect the spirit of justice mandated by the Indonesian Constitution or the principles of Islamic law.

The solution offered in this study is to reform problematic legal products that could harm citizens' constitutional rights by establishing a constitutional complaint mechanism. Such efforts are not only reformative but also transformative in building a responsive, inclusive, and substantive justice-oriented legal system. An integrative approach that combines the principles of *siyasaḥ dusturiyah* with modern constitutionalism can make a legal system that is not only formally valid but also ethically legitimate, grounded in the collective moral values of a highly civilized nation.

CONCLUSION

This study concludes that Article 4(2) of Government Regulation No. 45 of 1990 is discriminatory against female civil servants and contrary to the principles of constitutional justice and the *maqāṣid al-sharī'ah*. This regulation creates normative inequality that disregards women's constitutional rights and dignity, and demonstrates abuse of power. The absence of a constitutional complaint mechanism in the Indonesian legal system exacerbates the situation, as there is no adequate legal avenue for citizens to challenge policies that infringe upon their constitutional rights. The main contribution of this research lies in integrating *siyasaḥ dusturiyah* and the principles of the modern rule of law in the normative critique of public policy. The implications of this study include the importance of civil service reform and the establishment of a constitutional complaint mechanism as integral to fair democratic rule of law. This research expands the scope of constitutional jurisprudence studies within the context of Indonesian constitutional law. It encourages further research into inclusive constitutional corrective mechanisms grounded in a nation's collective moral values.

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List of Interviews

LMN (A Stakeholder and Official at the Civil Service and Human Resource Development Agency in One Region) in interview with author on 3 February 2025.

MSQ (A Stakeholder and Local Government Official in One Region), in interview with author on 9 March 2025.