

Gender, Authority, and Islamic Legal Administration: Rethinking Women's Eligibility as Penghulu in Indonesia

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Abstract: The position of penghulu holds a strategic role in the administration of Islamic family law in Indonesia. Although existing state regulations do not explicitly restrict this position based on gender, women's participation as penghulu remains limited, indicating a gap between legal norms and institutional practice. This research aims to examine the position of female penghulu by clarifying the conceptual distinction between penghulu as an administrative state office and wali hakim as a judicial-religious authority, a distinction that is often blurred in policy implementation and public perception. This study employs a qualitative literature-based approach using normative-critical analysis grounded in legal feminism. The analysis is supported by Buya Husein Muhammad's gender-responsive Islamic thought and Prof. Hasbi As-Shiddiqi's concept of Indonesian fiqh, which emphasizes contextual and sociological considerations in Islamic legal interpretation. The findings reveal that obstacles to women's participation as penghulu do not stem from Islamic legal prohibitions, but rather from public policy designs that conflate administrative and judicial functions, as well as from entrenched patriarchal social constructions. From a fiqh perspective, penghulu is not a pillar (rukun) of marriage, and therefore there is no normative basis requiring the position to be held exclusively by men. Furthermore, female penghulu contribute significantly to premarital education and the protection of women's rights within marriage. This study concludes that gender-responsive reform in penghulu policy is essential to promoting inclusive, just, and contextually grounded Islamic family law services in Indonesia. Such reform has important implications for strengthening legal certainty, enhancing gender equality, and improving the quality of public religious services within the framework of national Islamic law administration.

Keywords: Female penghulu, Islamic family law, Gender equality, Legal feminism

Abstrak: Posisi penghulu memiliki peran strategis dalam penyelenggaraan hukum keluarga Islam di Indonesia. Meskipun regulasi negara tidak secara eksplisit membatasi jabatan ini berdasarkan jenis kelamin, partisipasi perempuan sebagai penghulu masih sangat terbatas. Kondisi ini menunjukkan adanya kesenjangan antara norma



hukum dan praktik kelembagaan. Penelitian ini bertujuan untuk mengkaji posisi penghulu perempuan dengan menekankan pembedaan konseptual antara penghulu sebagai jabatan administratif negara dan wali hakim sebagai otoritas yudisial-keagamaan, yang dalam praktik sering kali dipahami secara tumpang tindih. Penelitian ini menggunakan metode kualitatif berbasis studi kepustakaan dengan pendekatan analisis normatif-kritis melalui perspektif feminisme hukum. Analisis diperkuat oleh pemikiran keadilan gender Buya Husein Muhammad serta konsep fikih Indonesia dari Prof. Hasbi As-Shiddiqi yang menekankan pentingnya konteks sosial dalam penafsiran hukum Islam. Hasil penelitian menunjukkan bahwa hambatan terhadap keterlibatan perempuan sebagai penghulu tidak bersumber dari larangan hukum Islam, melainkan dari desain kebijakan publik yang mencampuradukkan fungsi administratif dan yudisial, serta dari konstruksi sosial patriarkal yang telah mengakar. Dalam perspektif fikih, penghulu bukan merupakan rukun perkawinan, sehingga tidak terdapat dasar normatif yang mewajibkan jabatan tersebut hanya diemban oleh laki-laki. Selain itu, keberadaan penghulu perempuan terbukti berkontribusi penting dalam pendidikan pranikah serta perlindungan hak-hak perempuan dalam perkawinan. Penelitian ini menyimpulkan bahwa reformasi kebijakan penghulu yang responsif gender merupakan langkah penting untuk mewujudkan layanan hukum keluarga Islam yang inklusif, adil, dan kontekstual di Indonesia. Secara praktis, temuan ini berimplikasi pada penguatan kepastian hukum, peningkatan kesetaraan gender, serta perbaikan kualitas layanan publik keagamaan dalam sistem administrasi hukum Islam nasional.

Kata Kunci: Penghulu perempuan, Hukum keluarga Islam, Kesetaraan gender, Feminisme hukum

Introduction

The position of penghulu or marriage registrar plays a vital role in the administration of Islamic family law in Indonesia. As state officials under the Ministry of Religious Affairs, penghulu are responsible for marriage registration, reconciliation processes, and socio-religious family guidance (*munakahat*) (Muhazir et al., 2024; Blackwood, 2001). At the grassroots level, they function as the primary representatives of the state in delivering Islamic legal services and in connecting legal norms with everyday religious practices (Muhazir & Azwir, 2024). This position therefore occupies a strategic space at the intersection of law, religion, and public administration.

Along with broader socio-political developments, public policy concerning the penghulu office has undergone significant transformation. Regulatory reforms have increasingly recognized penghulu as civil servants and expanded their professional authority within the bureaucracy (Saputra, 2018; Muhazir, 2020). These changes reflect efforts toward institutional modernization and professionalization of Islamic legal administration (Farabi, 2020). However, despite these reforms, questions surrounding gender inclusion within the penghulu office remain largely unresolved.

Although Indonesia's formal legal framework, including regulations issued by the Ministry of Religious Affairs, does not explicitly impose gender-based restrictions on the penghulu position, women's participation in this office remains limited in

practice (Permata, 2023; El-saha, 2019). This condition reveals a clear gap between normative legal provisions and institutional reality. While no regulation explicitly prohibits women from becoming penghulu, social practices and dominant religious interpretations continue to operate as structural barriers (Sutrisno et al., 2023; Kharlie et al., 2021). In classical fiqh discourse, some conservative interpretations associate the role of penghulu with the function of wali hakim, which is often understood as a male-only religious authority (Saefullah et al., 2025). This conflation of administrative and judicial-religious roles reinforces patriarchal assumptions and constrains women's access to the position.

Existing studies on Islamic family law administration in Indonesia have largely focused on legal formalism, bureaucratic reform, or doctrinal analysis, with limited engagement with gender perspectives in public policy (Fauzi, 2019; Widarto et al., 2025). At the same time, contemporary scholarship on gender equality in Islamic law has developed substantially at the normative and theological levels, yet it is rarely linked to concrete state regulations governing religious offices (Aminuddin et al., 2019; Dikuraisyin et al., 2024). This disconnection constitutes a significant research gap that calls for an integrated analysis of public policy, legal interpretation, and gender ideology.

This study aims to examine public policies regulating the penghulu office through a gender-sensitive and socio-legal approach. The analysis draws on Buya Husein Muhammad's gender-responsive Islamic thought, which challenges patriarchal domination through maqasid al-shariah and socio-historical readings of religious texts, as well as Hasbi As-Shiddiqi's concept of Indonesian fiqh, which emphasizes contextual jurisprudence grounded in local customs and national values. These perspectives provide a normative framework to assess whether existing regulations reflect substantive gender justice.

The importance of this research lies in its focus on the penghulu as the frontline of Islamic family law services and as a concrete manifestation of state authority in religious life. By examining this office, the study addresses broader issues of gender equality, legal authority, and the role of the state in administering Islamic law. It also responds to contemporary demands for inclusive governance and gender-responsive public institutions in Muslim-majority contexts.

This research contributes theoretically by integrating public policy analysis, legal feminism, and contextual Islamic jurisprudence into a single analytical framework. Empirically, it offers a critical reading of regulations that appear gender-neutral but may reproduce structural inequality in practice. Practically, the study provides policy-relevant insights for developing more inclusive and gender-just regulations governing the penghulu office, while strengthening women's position as legal subjects within Indonesia's Islamic family law system.

Method

This study adopts a qualitative socio-legal research design to examine public policies regulating the *penghulu* office and their implications for gender equality in the

administration of Islamic family law in Indonesia (Barus, 2013). A qualitative approach is appropriate as the research focuses on interpreting legal norms, policy frameworks, and socio-cultural dynamics rather than measuring empirical variables (Fadli, 2021; Safarudin et al., 2023). The research employs a combined normative and sociological approach (Tarigan et al., 2025). The normative approach is used to analyze statutory regulations, particularly the Regulation of the Minister of Religious Affairs Number 20 of 2019, as well as classical and contemporary Islamic legal literature related to gender equality and public religious authority (Benuf & Azhar, 2020). The sociological approach is applied to understand social practices, cultural resistance, and dominant religious interpretations that influence women's limited participation in the *penghulu* office (Nurhayati et al., 2021).

Legal feminism serves as the main analytical framework in this study. This perspective is used to critically examine laws and public policies from the standpoint of gender justice, based on the assumption that legal regulations are not value-neutral and may reproduce patriarchal power relations through seemingly objective administrative arrangements (Alfiani & Anggraini, 2023; Mutaqin, 2018). Within the context of Islamic family law, legal feminism enables a critical reading of how state policies indirectly restrict women's access to formal religious authority (Marita & Pramesti, 2023).

The data consist of secondary sources, including legal documents, policy regulations, academic books, and peer-reviewed journal articles on public policy, Islamic jurisprudence, gender equality, and legal feminism. The analysis is conducted through normative-critical interpretation, integrating public policy analysis with gender theory and contextual Islamic jurisprudence to assess whether existing regulations reflect substantive gender justice in Islamic family law administration.

Results and Discussion

Results

The *penghulu* plays a pivotal role in the governance of Islamic family law in Indonesia, functioning as a key intermediary between the state and Muslim communities in the administration of marriage and family-related services. In its earlier configuration, the authority of the *penghulu* was largely derived from local religious customs and communal legitimacy, rather than from formalized state regulation. This traditional configuration positioned the *penghulu* primarily as a male-dominated religious actor, shaped by long-standing social norms that linked religious authority with masculine leadership (Silalahi & Zainal, 2025).

In the post-reform period, this institution has undergone a substantial reconfiguration. Regulatory reforms enacted by the Ministry of Religious Affairs, most notably Regulations No. 34 of 2016 and No. 20 of 2019, have repositioned the *penghulu* as a professional state official embedded within the bureaucratic system of Islamic family law administration (Busriyanti et al., 2025). These reforms introduced standardized requirements, clarified institutional responsibilities, and reinforced administrative

accountability, marking a clear departure from customary religious authority toward a modern model of state governance.

Nevertheless, the formal recognition of the *penghulu* as a state office has not automatically translated into gender-inclusive practice. Although the regulatory framework does not explicitly exclude women, their participation in this position remains minimal (Kurniawan et al., 2025). This disparity highlights a broader tension between normative legal equality and entrenched socio-cultural expectations. Examining the transformation of the *penghulu* institution therefore provides a critical lens through which to explore the intersections of public policy, gendered social structures, and religious interpretation in contemporary Indonesia (Hakim et al., 2020).

The research findings indicate that public policy regarding the *penghulu* position has undergone significant transformation since the post-reform era. Previously, the *penghulu* was largely perceived as a traditional figure whose authority was rooted in local customs and informal religious practices. In the contemporary context, however, this position has been formally institutionalized as a state function within the administrative structure of Islamic family law services. This transformation is particularly evident in the enactment of the Minister of Religious Affairs Regulation No. 34 of 2016 and Regulation No. 20 of 2019, which clearly define the competencies, workload, and scope of authority of the *penghulu* within modern state governance.

Another important finding is that existing regulations governing the *penghulu* office do not contain any explicit prohibition against women occupying the position. Legally, both women and men are recognized as equal citizens with the right to participate in the recruitment and selection process. Nevertheless, empirical data and recruitment reports show that the number of women who successfully pass the selection process remains very low. These barriers do not stem from formal legal rules, but rather from social conditions and dominant public perceptions regarding women's roles in religious authority.

The findings further reveal that the public continues to associate the role of *penghulu* with masculinity. This perception is shaped by assumptions that the position requires high mobility, the ability to handle family conflicts, and authoritative leadership in conducting marriage contracts. As a result, the role is often viewed as demanding physical strength and social authority that are stereotypically attributed to men. In practice, however, there is no religious doctrine that prohibits women from officiating marriage contracts or assuming responsibilities in marriage administration.

This study also demonstrates that the primary obstacles preventing women from becoming *penghulu* are rooted in cultural rather than religious factors. Persistent patriarchal norms tend to confine women to the domestic sphere, while religious authority is socially constructed as a male domain. Consequently, even though regulations are formally inclusive, women who aspire to the *penghulu* position frequently encounter social pressure in the form of stigma from family members, peers, and the wider community, who question their legitimacy and capability to perform the role.

Furthermore, the findings indicate that women's limited access to the *penghulu* position is reinforced by rigid interpretations of classical Islamic jurisprudence. Although no definitive Islamic legal text explicitly prohibits women from serving as *penghulu*, certain interpretations continue to frame religious leadership, including the officiation of marriage contracts, as inherently masculine. Such views are rooted in historical juristic interpretations shaped by specific socio-cultural contexts rather than representing immutable or final principles of Islamic law.

Discussion

Public policy governing the *penghulu* position in Indonesia has undergone a significant transformation over time, reflecting broader changes in the state's approach to the administration of Islamic family law. During the New Order period, the *penghulu* was largely perceived as a traditional religious functionary whose authority derived from local customs and informal religious legitimacy rather than from standardized professional qualifications. In this context, gender considerations were virtually absent, as patriarchal cultural norms operated as an unquestioned framework that normalized male dominance in religious authority (Widiyanto, 2013). From a legal feminism perspective, this absence of explicit regulation did not indicate neutrality, but rather allowed patriarchal assumptions to function as *de facto* legal norms that systematically excluded women without formal prohibition.

The reform era marked a critical shift in this regulatory landscape. Through population administration laws and bureaucratic reforms within the Ministry of Religious Affairs, the state increasingly redefined the *penghulu* as a functional civil servant embedded within the modern legal-administrative system. The enactment of Minister of Religious Affairs Regulation No. 34 of 2016 and No. 20 of 2019 signaled a process of professionalization by clarifying competencies, workload, and institutional authority. Formally, these regulations opened access to women by omitting any gender-based restrictions. However, legal feminism highlights that formal equality in law does not automatically produce substantive equality in practice. When regulatory frameworks fail to account for unequal social conditions, they may continue to reproduce gender hierarchies under the guise of neutrality (Amar et al., 2024).

This contradiction becomes evident in the persistent underrepresentation of women in the *penghulu* position despite their legal eligibility. Recruitment mechanisms are designed as competency-based and ostensibly gender-neutral, yet they operate within a social context where religious leadership remains strongly associated with masculinity. Public perceptions often frame the role as requiring physical mobility, authority in managing family conflict, and symbolic leadership in conducting marriage contracts, qualities that are socially constructed as male attributes. Legal feminism interprets these assumptions as forms of indirect discrimination, whereby neutral criteria systematically advantage men and marginalize women without explicit exclusion.

The barriers faced by women are further reinforced by cultural and theological narratives that conflate administrative authority with religious guardianship. Some conservative interpretations continue to regard the *penghulu* as an extension of male *qiwāmah*, despite the fact that the position functions primarily as a state administrative office rather than as a theological authority such as a *wali nikah*. Contemporary Islamic legal thought challenges this conflation by emphasizing the distinction between normative religious obligations and historically contingent juristic interpretations. Buya Husein Muhammad's gender-sensitive approach to Islamic jurisprudence is particularly instructive in this regard, as it exposes how patriarchal cultural norms have been embedded within religious interpretations and subsequently naturalized as divine mandates.

From the perspective of *maqāṣid al-shari‘ah*, restricting women's access to the *penghulu* position lacks normative justification (Mufti, 2024). The objectives of Islamic law, which prioritize justice, human dignity, and public welfare, are better served by inclusive policies that recognize competence rather than gender as the basis of authority. This view aligns with Hasbi As-Shiddiqi's concept of Indonesian Fiqh, which argues that Islamic law must be interpreted in dialogue with local socio-cultural realities rather than imposed through rigid adherence to classical Middle Eastern jurisprudence (Gunawan et al., 2025). Within this framework, the state possesses legitimate authority to regulate public religious offices in a manner consistent with national values and constitutional principles of equality.

Legal feminism provides a critical analytical lens to understand why gender inequality persists despite regulatory reform. It reveals how law and public policy, while appearing neutral, often reflect and reinforce existing power relations through institutional practices, cultural assumptions, and selective interpretations of religious doctrine (Masrofah et al., 2026). The case of female *penghulu* illustrates how gender exclusion is maintained not through explicit legal bans but through the interaction of law, culture, and theology. Consequently, achieving substantive gender equality requires more than regulatory openness; it demands a transformation of interpretive frameworks, institutional cultures, and public discourse surrounding religious authority.

In this sense, the future of the *penghulu* institution in Indonesia is inseparable from broader efforts to reform Islamic family law in a manner that is inclusive, gender-just, and contextually grounded. Expanding women's access to this position is not merely a question of administrative efficiency or representation but a fundamental issue of legal justice and citizenship. By integrating inclusive public policy, progressive Islamic legal thought, and feminist legal analysis, the *penghulu* institution can evolve into a more equitable mechanism of state religious service that reflects both constitutional commitments and the ethical foundations of Islamic law.

Conclusion

This study demonstrates that public policy reforms within the Ministry of Religious Affairs have formally positioned the *penghulu* as a professional functional office without explicit gender-based restrictions. Normatively, women possess equal legal opportunities to occupy this position; however, empirical evidence shows that women's access remains limited due to persistent cultural and interpretive barriers. These obstacles are primarily rooted in patriarchal social constructions and rigid interpretations of Islamic jurisprudence that continue to associate religious authority with masculinity. Drawing on Buya Husein Muhammad's gender-sensitive approach, this study confirms that such restrictions are largely cultural rather than doctrinal, while Prof. Hasbi As-Shiddiqi's concept of Indonesian *fiqh* highlights the importance of contextual *ijtihad* that allows religious offices to be regulated in accordance with Indonesia's socio-cultural realities. From this perspective, expanding women's participation as *penghulu* is consistent with the objectives of *maqāṣid al-shari‘ah*, as well as with principles of justice and public welfare.

The study concludes that the realization of a more inclusive *penghulu* institution requires both structural and interpretive interventions. Gender-responsive public policies must be strengthened and effectively implemented beyond formal legal recognition, while egalitarian interpretations of Islamic jurisprudence should be actively disseminated through religious education, institutional training, and public discourse. The integration of Islamic legal principles, constitutional guarantees, and public policy frameworks is therefore essential for the development of an Islamic family law system that is substantively just, professionally administered, and responsive to contemporary Indonesian society.

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