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RESTRICTING UNREGISTERED POLYGAMY: PROTECTING WOMEN'S RIGHTS WITHIN THE FRAMEWORK OF MAQASID SHARIAH



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Abstract

Marriage policies in Indonesia are based on the principle of open monogamy, but polygamy is still permitted under strict conditions. This article explores the issues of monogamy and polygamy from the perspective of Maqasid Syariah, focusing on the balance between protecting the rights of women and children and ensuring justice. The restriction of unregistered polygamous marriages (*poligami sirri*) through SEMA No. 3 of 2018 reflects the state's commitment to safeguarding family rights. This study analyzes how this policy aligns with Maqasid Syariah and aims to reduce the negative social impacts of polygamy in society. The research employs a normative qualitative method with a juridical and theological approach through literature reviews, policy analysis, and legal documents such as SEMA No. 3 of 2018. The findings show that the restriction of *poligami sirri* under SEMA aligns with the principles of Maqasid Syariah, particularly *hifz al-nasl* (protection of lineage) and *hifz al-'ird* (preservation of dignity), while promoting legal certainty and family well-being.

Abstrak

Kebijakan perkawinan di Indonesia berlandaskan prinsip monogami terbuka, namun tetap mengizinkan poligami dengan syarat-syarat ketat. Artikel ini mengeksplorasi isu monogami dan poligami dalam perspektif Maqasid Syariah, dengan fokus pada keseimbangan antara perlindungan hak perempuan dan anak serta pemenuhan keadilan. Pembatasan poligami sirri melalui SEMA No. 3 Tahun 2018 menunjukkan komitmen negara dalam menjaga hak-hak keluarga. Kajian ini menganalisis bagaimana arah kebijakan tersebut selaras dengan Maqasid Syariah dan berupaya mengurangi dampak sosial negatif poligami di masyarakat. Metode penelitian yang digunakan adalah kualitatif normatif dengan pendekatan yuridis dan teologis, melalui kajian literatur, analisis kebijakan, dan dokumen hukum seperti SEMA No. 3 Tahun 2018. Hasil penelitian menunjukkan bahwa pembatasan poligami sirri melalui SEMA sejalan dengan prinsip maqasid syariah, khususnya *hifz al-nasl* (perlindungan keturunan) dan *hifz al-'ird* (perlindungan kehormatan) serta mendorong kepastian hukum dan kesejahteraan keluarga.

INTRDUCTION

Marriage policies in Indonesia stipulate that monogamy is the fundamental principle of marriage, while polygamy is only permitted under specific conditions. Unregistered polygamy (*poligami sirri*), conducted without official procedures, has led to various issues, such as legal uncertainty and injustice toward women and children. The Supreme Court Circular (SEMA) No. 3 of 2018 has tightened regulations on *poligami sirri* by prohibiting the legal validation (*isbat nikah*) of such unofficial marriages. Amid this controversy, *maqasid syariah* the guiding principles of Sharia aimed at ensuring justice and well-being are highly relevant in assessing Indonesia's marriage policies. The purpose of this article is to analyze the direction of marriage policies between open monogamy



and polygamy within the framework of *maqasid shariah*, assessing the extent to which these policies can achieve *maslahah* (well-being) and prevent *mafsadah* (harm).

Polygamy has become a widely studied topic across various disciplines, including social, legal, religious, and human rights contexts. These studies can be classified into several areas of focus. First, the theological and jurisprudential aspect, such as the works of Suud Sarim Karimullah Karimullah¹, Shafra et al.,² and Rahmi Syahriza³. Second, the focus on state regulations, as explored by Edi Darmawijaya⁴, Ismail Marzuki⁵, Setia Handayani et al.,⁶, Khoirul Amru Harahap⁷ and Gentur Cahyono⁸. Third, the social and anthropological perspectives, as discussed in articles written by Moh. Mukri⁹, Sumanto al-Qurthuby¹⁰, Zuman Malaka¹¹ and Anwar Sadat¹². Fourth, the human rights and gender perspectives, as explored in articles written by Umi Salamah¹³, Nurkholis¹⁴ and Lina Kushidayati¹⁵. Fifth, the perspective of prominent figures, as discussed in articles written by Aرسال et al.,¹⁶, Ita Masitoh¹⁷ and Abdul Jalil¹⁸. Sixth, from the perspective of impact, as written by Zaimuddin

¹ Suud Sarim Karimullah, 'Poligami Perspektif Fikih Dan Hukum Keluarga Negara Muslim', *Maddika: Journal of Islamic Family Law*, 02.01 (2021), 7–20.

² Shafra, Aرسال, and others, 'The Dialect of Polygamy in the Thought of Classical and Contemporary Ulama: An Analysis of the Evolution of Islamic Legal Views on the Practice of Polygamy', *Al-Quds: Jurnal Studi Alquran Dan Hadis*, 8.1 (2024), 365–77 <<https://doi.org/10.29240/alquds.v8i2.8801>>.

³ Rahmi Syahriza, 'Analisis Teks Hadis Tentang Poligami Dan Implikasinya', *AL QUDS: Jurnal Studi Alquran Dan Hadis*, 2.2 (2018), 125 <<https://doi.org/10.29240/alquds.v2i2.471>>.

⁴ Edi Darmawijaya, 'Poligami Dalam Hukum Iskam Dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia Dan Indonesia)', *Gender Equality: Internasional Journal of Child and Gender Studies*, 1.1 (2015), 27–38.

⁵ Ismail Marzuki, 'Politik Hukum Poligami (Studi Terhadap Peraturan Perundang-Undangan Di Negara-Negara Muslim)', *Al-Manabji: Jurnal Kajian Hukum Islam*, 13.1 (2019), 141–57 <<https://doi.org/10.24090/mnh.v13i1.1799>>.

⁶ Setia Handayani, Aidil Alfin, and Dahyul Daipon, 'Implementasi Undang-Undang Nomor I Tahun 1974 Tentang Izin Poligami Di Pengadilan Agama Bukittinggi (Studi Kasus Perkara Nomor 081/PDT.G/2013/PA.BKT Dan Perkara Nomor 0328/PDT.G.2015/PA.BKT)', *ALHURRIYAH: Jurnal Hukum Islam*, 04.01 (2019), 83–98.

⁷ Khoirul Amru Harahap, 'Kebijakan Pemerintah Republik Indonesia Dan Hukum Islam Mengenai Poligami: Sebuah Kajian Perbandingan', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2.1 (2019), 89–105 <<https://doi.org/10.24090/volksgeist.v2i1.2684>>.

⁸ Gentur Cahyono Setiono and Achmad Bahroni, 'Tinjauan Yuridis Tentang Poligami Tanpa Izin Isteri Menurut Kompilasi Hukum Islam (KHI)', *Jurnal Dinamika Hukum Dan Masyarakat*, 1.1 (2018), 1–25.

⁹ Moh. Mukri, 'Poligami: Antara Teks Dan Konteks Sosial', *Al-'Adalah*, 14.1 (2018), 201–24 <<https://doi.org/10.24042/adalah.v14i1.2204>>.

¹⁰ Sumanto Al-Qurtuby, 'Between Polygyny and Monogamy Marriage in Saudi Arabia and Beyond', *Al-Jami'ah: Journal of Islamic Studies*, 60.1 (2022), 29–62 <<https://doi.org/10.14421/ajis.2022.60.1.29-62>>.

¹¹ Zuman Malaka, 'Perspektif Sosiologi Hukum Terhadap Poligami', *TARUNALAW: Journal of Law and Syariah*, 1.02 (2023), 175–83 <<https://doi.org/10.54298/tarunalaw.v1i02.159>>.

¹² Anwar Sadat and Ipandang, 'Dinamika Poligami Di Tengah Budaya Oligarkis-Patriarkis (Studi Pada Masyarakat Poliwali Mandar Dan Konawe Sulawesi)', *Al-Manabji: Jurnal Kajian Hukum Islam*, 14.1 (2020), 131–46 <<https://doi.org/10.24090/mnh.v14i1.3657>>.

¹³ Umi Salamah, 'Polemik Poligami Dalam Hukum Islam Dan Tinjauan Hak Asasi Manusia', *Dimar*, 1.1 (2019), 131–47.

¹⁴ Nurkholis, Jumayyah, and Wahidullah, 'Poligami Dan Ketidakadilan Gender Dalam Undang-Undang Perkawinan Di Indonesia', *Al-Ahkam*, 27.2 (2017), 195–212 <<https://doi.org/DOI:10.21580/ahkam.2017.27.2.1971>>.

¹⁵ Lina Kushidayati, 'Perempuan Dan Isu Poligami Di Indonesia', *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam*, 9.2 (2018), 273–89 <<https://doi.org/10.21043/yudisia.v9i2.4768>>.

¹⁶ Aرسال and Maizul Imran, 'Dialectics of Musdah Mulia's Thought on Polygamy in the Qur'an: Text and Context', *Jurnal Ushuluddin*, 31.2 (2023), 140–58 <<https://doi.org/10.24014/Jush.v31i2.22302>>.

¹⁷ Muhammad Romli Ita Masitoh alhumaedah, 'Hukum Poligami; Studi Analisa Pemikiran Siti Musdah Mulia', *SAINTIFIKA ISLAMICA: Jurnal Kajian Keislaman*, 9.2 (2022), 149–72.

¹⁸ Abdul Jalil, 'Wanita Dalam Poligami (Studi Pemikiran Muhammad SyahRuR', *Cendekia: Jurnal Studi Keislaman*, 2.1 (2016), 1–19.

et al.,¹⁹, Misbahul Munir et.al.,²⁰, Arif Sugitanata et.al.,²¹, Riski Amelia²² and Nina Nurmila²³. Seventh, from the aspect of sanctions, as written by Fahmil Huda Dinil Putra et.al.,²⁴ and Shafra et.al.,²⁵. The variety of research on this topic demonstrates that the theme of polygamy is intriguing to discuss from multiple perspectives, garnering significant attention from the academic community.

This study distinguishes itself by highlighting the restrictions on secret polygamy from the perspective of maqasid syariah, with a primary focus on efforts to safeguard women's rights. There are three main differences from previous studies: the use of the maqasid syariah framework as the primary approach, the analysis of secret polygamy as a threat to women's rights, and the contribution to marriage policy in Indonesia. This study employs maqasid syariah (objectives of Islamic law) as an analytical framework that not only emphasizes the legality and formal requirements of polygamy but also considers the benefits (maslahah) and prevention of harm (mafsadah) in every marriage. In this context, secret polygamy is deemed contradictory to maqasid syariah as it results in injustice and harm to women and children. The paper also identifies that the practice of polygamy without official registration and without the consent of the first wife undermines legal protection for women.

Furthermore, this research links polygamy regulations with the principles of maqasid syariah, demonstrating how policies such as SEMA No. 3 of 2018 and the Marriage Law support the maqasid vision in limiting unjust polygamous practices. By emphasizing law enforcement and oversight of marriages, this paper asserts that the restriction of secret polygamy is not merely a legal issue but also an effort to uphold justice, protect women's rights, and create benefits (maslahah) within marriage in Indonesia. This illustrates that legal policies regarding marriage must always align with the values of maqasid syariah and human rights. Herein lies the urgency of this study, advocating for fair and humane marriage regulations to ensure that the rights of women and children are adequately protected.

METHODS

This study employs a normative qualitative method with legal and theological approaches. The normative qualitative method is chosen because the focus of this research is to analyze legal norms and theological principles related to secret polygamy and its implications for women's rights. The legal approach is used to examine legal regulations, such as SEMA No. 3 of 2018 and the Marriage Law, to understand the legal limitations on secret polygamy practices in Indonesia. Meanwhile, the theological approach aims to explore the concept of maqasid syariah as an ethical and moral foundation for restricting secret polygamy, focusing on the principles of justice and welfare (maslahah). Data collection is conducted through literature review, including books, journals, and articles related to

¹⁹ Zaimuddin, Yadi Harahap, and Ramadhan Syahmedi, 'Konsekuensi Hukum Poligami Di Indonesia Dan Tunisia: Perspektif Teori Kepastian Hukum Dan Masalah Mursalah', *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 10.2 (2022), 373–92 <<https://doi.org/10.30868/am.v10i01.2770>>.

²⁰ Misbahul Munir Makka and Tuti Fajriati Ratundelang, 'Poligami Tanpa Izin Istri Pertama Dan Dampaknya Terhadap Keluarga', *Al-Mujtabid: Journal of Islamic Family Law*, 2.1 (2022), 34 <<https://doi.org/10.30984/ajifl.v2i1.1937>>.

²¹ Arif Sugitanata and Suud Sarim Karimullah, 'Nalar Kritis Poligami Sebagai Kekerasan Dalam Rumah Tangga', *HUNILA: Jurnal Ilmu Hukum Dan Integrasi Peradilan*, 1.2 (2023), 63–76 <<https://doi.org/10.53491/hunila.v1i2.515>>.

²² Riski Amelia, Khairul Imam, and Hamsah Hudafi, 'Dampak Poligami Terhadap Keharmonisan Rumah Tangga', *FAFAHAMNA: Jurnal Hukum Keluarga Islam*, 2.2 (2023).

²³ Nina Nurmila, 'Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property', *Al-Jamia'ah: Journal of Islamic Studies*, 54.2 (2016), 427–46 <<https://doi.org/10.14421/ajis.2016.542.427-446>>.

²⁴ Fahmil Huda Dinil Putra, Ismail, and Edi Rosman, 'Tinjauan Mashlahah Terhadap Sanksi Pidana Poligami Dalam Draft RKUHP Paslam 465-466', *ISLAM TRANSFORMATIF: Journal of Islamic Studies*, 03.02 (2019), 101–18.

²⁵ Shafra, Rahmawati, and others, 'Polygamy Without Permission in SEMA No. 4 of 2016 Perspective of Islamic Law', *GIC PROCEEDING*, 6.2 (2024), 65–75 <<https://doi.org/10.30983/gic.v1i1.462>>.

polygamy, maqasid syariah, and marriage law. Additionally, this research also involves the analysis of legal documents, such as government regulations and relevant circulars. Policy analysis focuses on how regulations regarding secret polygamy play a role in protecting the rights of women and children. Through this normative and theological approach, the study aims to provide recommendations for aligning existing policies with maqasid syariah and ensuring justice in marriage.

RESULT AND DISCUSSION

RESULT

Marriage Policy and Restrictions on Unregistered Polygamy in Indonesia

Secret polygamy refers to the practice of polygamy that is not officially registered with the Office of Religious Affairs (KUA) or does not meet the legal requirements and provisions of the state. The term "sirri" in Arabic means secret, indicating that this marriage is conducted privately without following legal procedures, thus lacking legal validity in the eyes of the state. Typically, this type of marriage is conducted only through a religious marriage ceremony. Due to the lack of registration, secret polygamy remains unmonitored and is not legally recognized. In the context of Indonesia, secret polygamy raises various social, legal, and human rights issues, particularly for women and children ²⁶.

In principle, Indonesia adopts the principle of open monogamy regarding marriage, as stipulated in Law No. 1 of 1974. Article 3, paragraph (1), states that marriage ideally involves only one husband and one wife. However, there are exceptions under certain conditions that allow a husband to marry more than one wife if he meets the requirements set by the law, which include obtaining permission from the religious court, securing consent from the first wife, and demonstrating financial capability.

This open monogamy aims to uphold justice within the household, prevent arbitrary practices of polygamy, and minimize the potential for injustice against women. Monogamy is the prioritized norm, but the law still provides a pathway for polygamy with various strict restrictions to maintain family stability and the well-being of household members. This reflects that polygamy is permitted under stringent conditions. Such regulations provide legal protection for wives and children from arbitrary actions by husbands. Top of Form Polygamy that is conducted not in accordance with the procedures established by the state is considered invalid. This means that secret polygamy is not legally recognized and cannot even be legitimized through the process of marriage validation (isbat nikah). This is based on the regulations set forth in SEMA No. 3 of 2018. An important point in this regulation is the prohibition of marriage validation for polygamy carried out secretly.

"Requests for marriage validation of polygamy based on secret marriages, even for the sake of the children, must be declared inadmissible."

Secret polygamy faces restrictions through SEMA No. 3 of 2018. This regulation aims to prevent the practice of secret polygamy, protect women's rights, and uphold the integrity of marriage laws by encouraging society to register their marriages. It emphasizes that all marriages must be recorded and meet the legal requirements to receive recognition. Thus, a husband cannot arbitrarily take a second wife without following the correct legal procedures, which is expected to reduce the incidence of secret polygamy in society. Although valid according to religious teachings, secret polygamy does not provide legal protection for women and children, and it opens the door to practices of injustice.

Therefore, the restriction of secret polygamy through SEMA No. 3 of 2018 is part of the state's efforts to protect the rights of women and children and to ensure that every marriage has a clear legal

²⁶ Mohammad Al-Sharfi, Karen Pfeffer, and Kirsty A. Miller, 'The Effects of Polygamy on Children and Adolescents: A Systematic Review', *Journal of Family Studies*, 22.3 (2016), 272–86 <<https://doi.org/10.1080/13229400.2015.1086405>>; Misda Deni, Asmuni Asmuni, and Tengku Erwinsyahbana, 'Perlindungan Hukum Dan Hak Waris Istri Kedua Dalam Perkawinan Poligami Tanpa Izin', *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 2.3 (2020), 633–43 <<https://doi.org/10.34007/jehss.v2i3.128>>.

basis. By not recognizing secret polygamy and strengthening the procedures for marriage registration, the state aims to prevent the abuse of polygamous practices and ensure justice within families. The aim is for polygamy to be conducted with principles of justice and responsibility. This SEMA seeks to prevent polygamous practices outside legal procedures and reinforces the state's commitment to upholding valid marriage regulations. This regulation reflects the wisdom of Islamic law within the context of a modern state, where marriage law considers not only religious texts but also social aspects and human rights. This framework emphasizes that polygamy can only be performed under strict conditions and clear legal procedures, making any polygamous practices outside these regulations illegal. It also reaffirms that monogamy is the ideal choice in the Indonesian marriage system.

Polygamous Marriage in the Context of Islamic Law

Ta'addud nikah is a term synonymous with *ta'addud al-jauzaat*, meaning the plurality of wives. In terms of definition, it refers to marrying multiple women simultaneously, commonly known as polygamy. In Islam, polygamy is a form of marriage in which a husband is permitted to have more than one wife, with a maximum limit of four wives. Polygamy is not an obligation but rather a concession granted under certain circumstances ²⁷. However, Islam establishes strict conditions and rules to ensure that polygamy is conducted fairly and does not harm the parties involved, especially the wives and children.

Polygamy is regulated in the Quran, particularly in Surah An-Nisa, verse 3:

"...And if you fear that you will not be just to the orphans, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not transgress." (QS. An-Nisa: 3).

This verse permits polygamy with a maximum of four wives. However, this permission is accompanied by a heavy condition: the ability to act justly. Islam prioritizes monogamy if a man feels he cannot meet the requirement of justice.

However, the concept of justice has become a topic of debate among classical and contemporary scholars, especially regarding its limitations and application in a social context. The concept of justice in polygamy has two main dimensions: material and emotional. Material justice includes fulfilling the rights of the wives, such as financial support, housing, and equitable time distribution. In this context, the husband is expected to meet the basic needs of his wives proportionally. Emotional justice is more complex, relating to the affection and attention given to each wife. Scholars debate the boundaries of this justice ²⁸. Some, such as those in the Hanafi and Shafi'i schools, argue that justice can be more emphasized on the material aspects, while feelings of love cannot always be equitably distributed. The Maliki and Hanbali schools, on the other hand, contend that the husband should also strive to balance the feelings and attention given to each wife. In Surah An-Nisa: 129, Allah reminds that humans are not capable of perfect justice, especially in emotional aspects. This verse indicates that although a husband cannot control love and attraction, he is still required to strive to fulfill the material rights and not favor one wife over the others. In other words, justice in polygamy is an ongoing effort to meet the rights of each wife equitably, even though perfection in love is difficult to achieve.

Classical scholars, such as Imam al-Tabari and Ibn Kathir, interpret justice in this verse as a requirement to be fair in material or outward aspects, such as the distribution of financial support

²⁷ Iim Fahimah, 'Poligami Dalam Perspektif Ushul Al-Fiqh', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 4.2 (2017), 99–111 <<https://doi.org/10.29300/mzn.v4i2.1014>>; Firman Doni and Risman Bustamam, 'Poligami Dalam Pandangan Quraish Shihab Dan Sayyid Qutb', *Istinarah: Riset Keagamaan, Sosial Dan Budaya*, 3.2 (2021), 104–21 <<https://doi.org/10.31958/istinarah.v3i2.4821>>; Samani Sam'ani and others, 'Pragmatism of Polygamous Family In Muslim Society: Beyond Islamic Law', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7.1 (2023), 321–40 <<https://doi.org/10.22373/sjhk.v7i1.15874>>.

²⁸ Shafra, Aarsal, and others.

(money, food, clothing) and the allocation of nights spent with each wife. They emphasize that achieving justice in feelings of love or emotional inclination is impossible ²⁹. This is based on QS An-Nisa: 129, which states that humans will never be fully just in their affections. Thus, according to classical scholars, polygamy is permitted if the husband is able to treat his wives fairly in physical and material aspects. The justice referred to here pertains to aspects that can be objectively controlled, such as the distribution of time, wealth, and living arrangements, but not in terms of feelings.

Contemporary scholars tend to place greater emphasis on the broader meaning of justice, not only in material terms but also in social and emotional justice. They argue that in the modern context, the practice of polygamy can potentially lead to injustice for women and children. Some contemporary scholars even view the difficulty of achieving emotional justice as a strong reason to avoid polygamy altogether. Muhammad Abduh emphasizes that polygamy is not an ideal rule and should only be practiced in extraordinary circumstances. According to him, the justice mentioned in verse 3 should be understood comprehensively, encompassing psychological, emotional, and social rights ³⁰. Yusuf al-Qardhawi also argues that justice in polygamy is not only related to material distribution but also concerns feelings and attention towards each wife. Therefore, according to Qardhawi, the practice of polygamy in modern conditions is only acceptable in genuinely urgent situations and comes with the full obligation to act justly ³¹. Based on the explanation above, it is clear that both classical and contemporary scholars agree that justice is the primary condition. Monogamy is prioritized if justice cannot be achieved.

In the context of Islamic jurisprudence, a husband who does not act justly in polygamy faces serious consequences, both morally, spiritually, and legally. In a hadith, the Prophet Muhammad (peace be upon him) said ³² :

"Whoever has two wives and favors one of them over the other will come on the Day of Judgment with one of his shoulders tilted (crooked)." (Reported by Abu Dawud, Tirmidhi, and An-Nasa'i).

This hadith emphasizes that injustice towards wives will lead to disgrace in the Hereafter. Injustice in polygamy is classified as an act of wrongdoing (zulm). The Qur'an strongly condemns injustice, as stated in Surah An-Nisa (4:129):

"And you will never be able to be just between wives, even if you strive to do so..."

Although this verse emphasizes that perfect justice in feelings may be difficult to achieve, injustice in terms of material support and time allocation is a clear violation that is not justifiable. Such injustice can also lead to strained relationships between the husband, wives, and children, ultimately disrupting the harmony of the household ³³. With this warning, Islam emphasizes the importance of justice in polygamy as an obligation that must be fulfilled by the husband to ensure the well-being of the family and to carry out his responsibilities faithfully.

²⁹ Musdah Mulia, *Islam Menggugat Poligami*, ke-1 (Jakarta: Gramedia Pustaka Utama, 2004).

³⁰ U Abdurrahman, 'Penafsiran Muhammad "Abduh Terhadap Alquran Surat Al-Nisâ" Ayat 3 Dan 129 Tentang Poligami', *Al-Adalah*, 14.1 (2017), 25–46 <<https://doi.org/10.24042/adalah.v14i1.1139>>.

³¹ Abdul Rahman, 'Pendapat Yusuf Al-Qardhawi Terhadap Larangan Poligami Bagi Kader Partai Solidaritas Indonesia', *SAKINA: Journal of Family Studies*, 4.3 (2020), 1–18.

³² Saifuddin Zuhri Qudsy and Mamat S. Burhanuddin, 'Penggunaan Hadis-Hadis Poligami Dalam Tafsir Ibnu Katsir', *Musawa*, 15.2 (2016), 1–18; Nadia and Sapruddin Idris, 'Menelaah Hukum Pernikahan Monogami Dan Poligami Perspektif Hadis', *Comparativa: Jurnal Ilmiah Perbandingan Mazhab Dan Hukum*, 2.2 (2021), 123–40 <<https://doi.org/10.24239/comparativa.v2i2.32>>.

³³ Wely Dozan, 'Fakta Poligami Sebagai Bentuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir Dan Isu Gender', *Marwah: Jurnal Perempuan, Agama Dan Jender*, 19.2 (2020), 131–47 <<https://doi.org/10.24014/marwah.v19i2.11287>>; Sugitanata and Karimullah; Amelia, Imam, and Hudafi.

Over time, the definition and implementation of justice in the context of polygamy have evolved in line with social conditions and societal understanding in each era ³⁴. In the modern era, the wife's consent and approval from the court have become part of the meaning of "justice" in practicing polygamy.

Maqasid al-Shariah in Ushul Theory

The term Maqasid al-Shariah refers to a theory in usul al-fiqh aimed at understanding Islamic law. Maqasid al-Shariah literally means the objectives or purposes of Shariah. This concept emphasizes that every law in Islam must contain benefits and avoid harm for both individuals and society. It plays a crucial role in legal rulings by ensuring that Islamic laws are understood not only in their textual sense but also in their contextual meaning, aligning with the primary objective of Shariah to promote welfare (maslahah).

The Maqasid approach was systematically developed by Abu Ishaq al-Shatibi (730 AH–790 AH). According to al-Shatibi, every law revealed by Allah SWT carries benefits (maslahah) for His servants, both in this world and in the hereafter ³⁵. In his view, every law has a purpose, and that purpose ultimately leads to the welfare (maslahah) of humanity. Al-Juwayni even emphasized that maqasid is synonymous with masalih (plural of maslahah). Thus, it can be concluded that maqasid, according to al-Shatibi and al-Juwayni, can be understood as maslahah. Meanwhile, Imam al-Ghazali categorized maqasid within the context of maslahah mursalah ³⁶—welfare that is not explicitly mentioned in the scriptural texts (nass).

Jasser Auda explains that maslahah and maqasid are integral components of Islamic law, and they are only considered maqasid if they contain legitimate objectives that can achieve welfare (maslahah) and prevent harm (mafsadah) ³⁷. Auda's view reflects that maslahah and maqasid play a crucial role in understanding and applying Islamic law. They are not merely abstract concepts but must be connected to concrete objectives that can achieve welfare and prevent harm. This illustrates the principles of balance and wisdom in evaluating actions or policies.

By ensuring that these objectives align with the values and principles of Sharia, Auda emphasizes the importance of maintaining consistency between the implementation of Islamic law and the goals established by Sharia. This approach also highlights the need to consider specific contexts and situations when assessing the benefits (maslahah) and harms (mafsadah) of an action or policy.

³⁴ L Lendrawati, 'Pembaharuan Fiqh Klasik Tentang Perizinan Poligami Dalam Undang-Undang No. 1 Tahun 1974', *Ijtihad*, 36.1 (2020), 95–105; Abdul Halim, 'Zin Poligami Dalam Bingkai Maqashid Syariah Dan Hukum Progresif', *Al-Mazaahib: Jurnal Perbandingan Hukum*, 7.2 (2019), 93–111 <<https://doi.org/10.14421/al-mazaahib.v8i2.2216>>; D Hinchcliffe, 'Polygamy in Traditional and Contemporary Islamic Law', *Issues in Islamic Law*, 2017, 63–78 <<https://doi.org/10.4324/9781315092386-6>>.

³⁵ Abu Ishaq Al-Syathibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah* (Mesir: Maktaba 'Tijariah Kubra); Agung Kurniawan and Hamsah Hudafi, 'Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat', *Al Mabsut*, 15.1 (2021), 29–38; Nirwan Nazaruddin and Farhan Kamilullah, 'Maqashid As-Syariah Terhadap Hukum Islam Menurut Imam As-Syatibi Dalam Al-Muwafaqat', *Jurnal Asy-Syukriyyah*, 21.1 (2020), 106–23 <<https://doi.org/10.36769/asy.v21i1.101>>.

³⁶ Bahrul Hamdi, 'Maslahah Dalam Paradigma Tokoh (Antara Al-Ghazali, As Syatibi Dan Najmuddin Al Thufi)', *Al Hurriyah: Jurnal Hukum Islam*, 02.02 (2017), 219–33; Al-Ghazali, *Al-Mustashfa Min 'Ilm Al-Ushul*, Juz I (Libanon: Muassasah al-Risalah, 1997); Mohammad Hadi Sucipto and Khotib, 'Perdebatan Maslahah Mursalah Dalam Kitab-Kitab Al-Imam Al-Ghazali', *El-Faqih: Jurnal Pemikiran Dan Hukum Islam*, 6.1 (2020), 1–17 <<https://doi.org/10.29062/faqih.v6i1.106>>.

³⁷ Syahrul Sidiq, 'Maqasid Syariah & Tantangan Modernitas: Sebuah Telaah Pemikiran Jasser Auda', *In Right: Jurnal Agama Dan Hak Asasi Manusia*, 7.1 (2017), 140–61 <<https://doi.org/10.14421/inright.v7i1.1461>>; Muhammad Baiquni Syihab, 'Telaah Kritis Pemikiran Jasser Auda Dalam Buku "Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach"', *AN NUR: Jurnal Studi Islam*, 15.1 (2023), 114–36 <<https://doi.org/10.37252/annur.v15i1.455>>; Maulidi Maulidi, 'MAQASID SYARIAH SEBAGAI FILSAFAT HUKUM ISLAM: Sebuah Pendekatan Sistem Menurut Jasser Auda', *Al-Mazaahib: Jurnal Perbandingan Hukum*, 7.1 (2022), 113–33 <<https://doi.org/10.14421/al-mazaahib.v7i1.2860>>.

Therefore, maqasid syariah is an important concept in Islamic law that refers to the ultimate goals of Sharia, which are the laws of Islam. This concept aims to understand and implement Islamic law by considering the objectives to be achieved, rather than focusing solely on the literal aspects of the law. Maqasid syariah helps ensure that Islamic law is applied fairly, wisely, and in accordance with Islamic moral and ethical principles.

According to al-Ghazali, maslahah serves to uphold the objectives of Sharia, which encompass five important aspects: the preservation of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-'aql), lineage (hifz al-nasl), and wealth (hifz al-mal). In his work *al-Mustasfa min 'Ilm al-Usul*, al-Ghazali also categorizes maqasid syariah based on their level of importance into three categories³⁸: Daruriyat: Essential and fundamental needs for human survival. Hajjiyat: Secondary needs that help alleviate difficulties without threatening safety. Tahsiniyat: Additional needs that enhance and beautify life, such as ethical and aesthetic aspects. The categorization of maqasid into these levels has become an accepted framework among scholars of ushul fiqh for establishing Islamic laws. This approach also allows for ijtihad, enabling Sharia to be applied relevantly across various conditions and eras without abandoning its fundamental objectives—namely, to bring about welfare and prevent harm.

The concept of maqasid syariah was further expanded and refined by Asy-Syatibi in his work *al-Muwafaqat fi Usul al-Shari'ah*. Asy-Syatibi not only developed the classification introduced by al-Ghazali but also made it more systematic and relevant to the social context. He emphasized that maqasid are not merely legal objectives but also a crucial foundation for ijtihad and the establishment of new laws. According to Asy-Syatibi, all Sharia laws were revealed to promote welfare and prevent harm. With this perspective, Asy-Syatibi introduced the concept that Sharia must be applied flexibly to remain relevant to the ever-changing conditions of society. He also emphasized the importance of considering long-term benefits, rather than just short-term gains, to maintain a balance between worldly welfare and the hereafter. This underscores that maqasid syariah is not solely focused on the implementation of formal rules, but also on achieving benefits and preventing harm in all aspects of life. Maqasid Syariah plays a central role and holds a significant position in the establishment of Islamic law. It serves as the primary framework to ensure that every law applied brings benefits and remains relevant to the evolving times. The position of maqasid is not merely an addition but a fundamental principle that guides ijtihad and fatwas, especially in the context of contemporary law. Thus, maqasid enables Islamic law to remain dynamic, just, and aligned with the primary objective of Sharia, which is to create welfare for humanity.

DISCUSSION

Restrictions on Unregistered Polygamy: Protecting Women's Rights within the Framework of Maqasid al-Shariah

Maqasid syariah refers to the objectives and values underlying Islamic law, which aim to protect five essential aspects: religion, life, intellect, lineage, and property. In the context of secret polygamy, these limitations can be analyzed through the framework of maqasid syariah. First, protecting women's rights. The limitation of secret polygamy ensures women's right to justice in marriage. In unrecognized polygamous practices, women are often treated unfairly, and their rights are overlooked. With clear regulations in place, women have legal protection and the opportunity to claim their rights. Second, ensuring the welfare of children. Children born from secret marriages often do not receive their rights, such as inheritance and legal recognition. These limitations help ensure that all children, regardless of their parents' marital status, receive equal protection and rights. This aligns with the maqasid syariah

³⁸ Deri Wanto, Rahmad Hidayat, and Repelita, 'Maqasid Syariah's Change as Theory: From Classical to Cotemporary Maqasid Syariah', *Al-Istinbath: Jurnal Hukum Islambath*, 6.2 (2021), 427–54 <<https://doi.org/10.29240/jhi.v6i2.3122>>; Al-Ghazali.

principle that safeguards lineage. Third, promoting equitable monogamy. By asserting that polygamy must comply with existing regulations, these restrictions encourage a fairer and more just practice of monogamy. This also aligns with the current social needs, where many women seek certainty and fairness in marriage. Fourth, preventing abuse and exploitation. In practice, unregistered polygamy is often misused by certain parties, especially in the context of gender inequality. By implementing restrictions, the law can prevent the exploitation of women and children, ensuring that polygamy is conducted in good faith and in accordance with Islamic law.

Thus, it can be said that the restriction of unregistered polygamy is an important step in safeguarding the rights of women and children, in line with the principles of *maqasid syariah*. With clear regulations in place, it is hoped that polygamy practices can be conducted fairly, transparently, and in accordance with the prevailing laws. Society needs to be encouraged to understand the importance of protecting the rights of women and children in marriage, as well as upholding justice and equality in every family relationship.

The primary objective of restricting unregistered polygamy is to maintain balance and justice within the family. This policy aligns with *maqasid syariah*. Firstly, the *maqasid* category of *daruriyat* is particularly relevant to *hifz al-nasl* (protection of lineage) and *hifz al-'ird* (protection of honor). *Hifz al-nasl* and *hifz al-'ird* are two fundamental principles in *maqasid syariah* that serve as the foundation for marriage policies in the context of polygamy. *Hifz al-nasl* refers to the protection of lineage. In this context, the restrictions aim to ensure that children born from marriages have a clear and legitimate status. The registration of marriages is crucial to guarantee their identity and legal status. With a valid marriage, children's rights regarding maintenance, education, and inheritance can be secured, thereby reducing the potential for family conflicts that may harm the children. Meanwhile, *hifz al-'ird* relates to the protection of honor, both of individuals and families. Unregistered polygamy poses a risk of undermining women's honor due to the lack of a clear legal status, which makes wives and children vulnerable to losing their rights. These restrictions are intended to safeguard the dignity and honor of women. In this context, polygamy is limited and strictly regulated to prevent potential abuse of women's rights, ensuring that women are not treated as mere objects. This policy strives to create an environment that respects the rights and dignity of every individual within the family. Second, the *maqasid* category of *hajjiyat* (complementary needs) includes needs that are not essential like *daruriyat* but are important for preventing life's difficulties. Failing to meet these needs can lead to hardship and discomfort, even if they do not threaten survival. Restrictions on unregistered polygamy help avoid social and family conflicts that may arise from unregulated polygamous practices. Without clear rules, polygamy can lead to dissatisfaction among wives and children, creating social tension. Regulating polygamy through official channels provides legal certainty and emotional stability for all family members, allowing them to live without worrying about their status or rights. Third, the *maqasid* category of *tahsiniyat* (perfection needs) relates to moral, ethical, and aesthetic aspects that enhance life. Although not obligatory, fulfilling *tahsiniyat* encourages the creation of a more harmonious and orderly life. Restrictions on unregistered polygamy align with moral values in Islam that emphasize justice and protection for women and children. Islam promotes a family life that is harmonious, dignified, and free from exploitation. By prohibiting unregistered polygamy, Islamic law aims to establish a more orderly family structure that respects the rights of each individual. This enhances the overall quality of family and community life.

Maqasid Syariah also emphasizes the importance of balancing the rights of husbands and the protection of wives. In Islam, husbands have the right to lead the household and manage family life, which includes the right to practice polygamy under specified conditions. Husbands are expected to provide adequate support, protection, and attention to their wives and children. On the other hand, the protection of wives is a crucial element in marriage policies. Indonesian marriage law emphasizes the

necessity for husbands to follow procedures for polygamy to ensure that wives being taken in polygamy are safeguarded from arbitrary actions by their husbands.

Thus, from the perspective of *maqasid syariah*, the restriction of polygamy without formal recognition not only emphasizes legal aspects but also moral and ethical values that protect individual rights, create justice, and foster harmonious families. These principles aim to maintain the overall welfare of society by promoting healthy and respectful relationships within the institution of marriage.

This regulation reflects the wisdom of Islamic law in the context of a modern state, where marriage law takes into account not only religious texts but also social aspects and human rights. The position of women is strengthened, as they cannot be subjected to polygamy without official recognition that protects their rights. With strict conditions in place, the state ensures that the practice of polygamy does not harm the rights of wives and children, while husbands are expected to be more responsible for all their wives and children. At the same time, it affirms that monogamy is the ideal choice within the Indonesian marriage system.

This restriction also reflects the state's commitment to establishing open monogamy, where polygamy can only be practiced under certain conditions and with strict oversight. Secret polygamy, conducted without official recognition through the courts, raises numerous issues, particularly regarding the rights of women and children. In this context, limiting secret polygamy becomes essential to safeguarding women's rights, aligning with the objectives of *Maqasid Syariah*. With the issuance of SEMA No. 3 of 2018, which prohibits legal recognition of secret polygamy, this measure is expected to protect the rights of women and children. While polygamy is permitted in Islam, it must be practiced in accordance with applicable rules and regulations. This step aligns with *maqasid syariah*, which emphasizes protection and welfare for all family members. By prohibiting the legal recognition of unregistered polygamy, the state reduces the risk of abuse and creates clear standards for legitimate marriage practices. Through these efforts, the state is committed to fostering a fairer environment, reducing family conflicts, protecting individual rights, and building a more harmonious society. Thus, the restriction of secret polygamy not only conforms to Islamic values but also plays a crucial role in maintaining a balance between individual and broader societal interests.

CONCLUSION

The restriction of secret polygamy in Indonesia is an important step in protecting the rights of women and children and maintaining legal and social order. Secret polygamy, conducted without official registration and without following legal procedures such as obtaining the wife's consent or approval from the Religious Court, has the potential to create injustices, particularly regarding rights to support, inheritance, and legal status. This limitation aligns with *maqasid syariah*—the primary objectives of Islamic law—which emphasize the protection of life, honor, and lineage. Regulations such as Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), and SEMA No. 3 of 2018 serve as concrete applications of *maqasid syariah* within national law. The state asserts that monogamy is the primary form of marriage, while polygamy can only be practiced under strict conditions to prevent injustice. This restriction also avoids the risks associated with marriages conducted outside legal procedures, which are vulnerable to exploitation and neglect. Overall, this policy demonstrates Indonesia's commitment to establishing a fair and orderly marriage system, in accordance with the principles of Islamic law and the protection of human rights. Through oversight and regulation, the state ensures that every marriage brings benefits and safeguards the interests of women, children, and families.

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