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Islamic Law Beyond Punishment: A *Maqāṣid*-Based Analysis of the Criminalization of Unlawful Polygamous Marriages in Contemporary Indonesian State Law

Abstract: The enactment of the 2026 Indonesian Criminal Code marks a significant transformation in the national legal system, including the introduction of criminal sanctions for unlawful polygamous marriages. This article examines the construction of state criminal law in the criminalization of unlawful polygamy within Indonesia's contemporary criminal policy through the lens of *maqāṣid al-Sharī'ah*. Employing normative legal research that combines doctrinal legal analysis with a *maqāṣid*-based approach, the study argues that the criminalization of unlawful polygamy constitutes a form of state-led *ijtihād* grounded in the objectives of Islamic law and embedded within modern criminal justice policy. Rather than prohibiting polygamy as a lawful institution under Islamic law, the legislation targets unauthorized and fraudulent polygamous marriages that undermine legal certainty, gender equality, and family protection. This approach reflects a shift from formal textual legality toward a substantive legal paradigm centered on the protection of human dignity and social justice. From the perspective of *maqāṣid al-Sharī'ah*, the criminalization of unlawful polygamy aligns with the objectives of safeguarding lineage (*ḥifẓ al-nasl*), human dignity (*ḥifẓ al-'irḍ*), and public welfare (*maṣlaḥah*). The findings demonstrate that *maqāṣid* provides a dynamic framework for contemporary *ijtihād*, enabling the harmonization of Islamic law and national law while legitimizing modern criminal law as an instrument for realizing the higher objectives of the Sharī'ah. Although debates surrounding the criminalization of polygamy often stem from a reductionist understanding of Sharī'ah as a fixed body of permissive norms, this article contends that criminal sanctions against unlawful polygamous marriages are not inherently inconsistent with Islamic law. Their legitimacy depends on adherence to the principles of proportionality, due process, and judicial discretion in criminal law enforcement. By moving beyond the conventional dichotomy between permissibility and prohibition, this study contributes to contemporary Islamic legal scholarship by

offering a *maqāṣid*-oriented reconceptualization of the relationship between state authority, criminal legislation, and Islamic normativity.

Keywords: Criminal Law Policy; Criminalization; Islamic Law; *Maqāṣid Al-Sharī'ah*; Unlawful Polygamous Marriage.

INTRODUCTION

Polygamy is a never-ending issue that continues with several questions, especially in the discourse of Islamic law issues. In the Indonesian context, it continues to be debated alongside the struggle between religious norms, state law, and social justice discourse.¹ In a multicultural country comprised of various religious denominations like Indonesia, polygamy is neither explicitly prohibited nor freely permitted, but rather regulated by the Marriage Law, which requires strict procedural and substantive conditions.² In the Indonesian contemporary state, with the new Indonesian Criminal Code (2026) coming into effect, the issue of polygamy has resurfaced with classic debates but complemented by new interpretations, particularly the discourse on criminalizing marriages conducted despite legal obstacles, including polygamous marriages conducted without court approval.

¹ Novita Dewi Masyithoh et al., "Unregistered Polygamous Marriage of Civil Servants and Its Implication for Wives' Financial Problem, Social Fate and Loss of Children's Welfare," *International Journal of Early Childhood Special Education* 13, no. 2 (December 2021): 312–318, <https://doi.org/10.9756/INT-JECSE/V13I2.211067>; Khoiriyah Shofiyah Tanjung et al., "A Normative Study on Polygamy and Gender Justice in Islamic Family Law: Insights from Asean Jurisprudence," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 2 (October 2025): 211–35, <https://doi.org/10.62976/ajisc.v2i2.1429>; Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah: Journal of Islamic Studies* 54, no. 2 (December 2016): 427–446, <https://doi.org/10.14421/ajis.2016.542.427-446>.

² Holilur Rohman et al., "Between Law and Faith: Judicial Dilemmas of Unregistered Polygamy and Divorce in Indonesia," *Indonesian Journal of Islamic Law* 8, no. 2 (December 2025): 168–187, <https://doi.org/10.35719/5f0dpp36>; Ridwan Rusliadi, "Polygamy in the Perspective of Islamic Law and Indonesian Positive Law," *KnE Social Sciences*, ahead of print, October 30, 2023, <https://doi.org/10.18502/kss.v8i18.14280>; Nabiela Naili, A. Kemal Riza, and Ta'mirotul Biroroh, "The Dynamic Problems of Polygamy Cases in Indonesia: The Showcase of Juridical Authority, Implementation of Contra Legem and Fiqh Argumentations," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 12, no. 1 (April 2022): 51–75, <https://doi.org/10.15642/ad.2022.12.1.51-75>.

In academic debates, several studies, including Adrienne D. Davis³, Imron Rosyadi⁴, Firdaus⁵, and Rizqa Ahmadi⁶, argue that criminalization constitutes state interference in religiously sanctioned practices, even overstepping its bounds into the private affairs of individuals. Meanwhile, several studies, including Ahmad Faisal⁷, Faida Fidiani⁸, Dri Santoso⁹, Muhammad Nasrullo¹⁰, and Rahmi Nurtsani¹¹, support the notion that criminalizing marriage crimes is necessary to protect vulnerable groups, particularly women and children. This academic debate reflects a deeper epistemological conflict between textualist interpretations of Islamic law and modern legal rationality that emphasizes human rights, gender justice, and legal certainty.

Unlawful polygamy is regulated in the 2026 Indonesian Criminal Code, and criminal sanctions are imposed for marriages conducted in violation of legal impediments. This development has generated significant legal and religious debate, particularly

³ Adrienne D. Davis, "Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality," *Columbia Law Review* 110, no. 8 (2010): 1955–2046.

⁴ Imron Rosyadi, Helmy Ziaul Fuad, and Ashlaha Baladina Zaimuddin, "Criminalization of Unregistered Marriage in Indonesia: A Legal System Analysis Based on Friedman's Theory," *Al'Adalah* 22, no. 1 (June 2025): 147–180, <https://doi.org/10.24042/adalah.v22i1.22779>.

⁵ Firdaus Firdaus et al., "The Protection of Islamic Women in Indonesia: Evaluation of Polygamy Sanctions and Its Implications," *Karsa Journal of Social and Islamic Culture* 31, no. 1 (June 2023): 79–108, <https://doi.org/10.19105/karsa.v3i1i1.10611>.

⁶ Rizqa Ahmadi, Lilik Rofiqoh, and Wildani Hefni, "Brands of Piety? Islamic Commodification of Polygamous Community in Indonesia," *Journal of Indonesian Islam* 16, no. 1 (June 2022): 153–174, <https://doi.org/10.15642/JIIS.2022.16.1.153-174>.

⁷ Ahmad Faisal, "Reproduction of Unregistered Polygamous: Unregistered Marriage Services and Marriage Simplification," *Al-Ulum* 20, no. 2 (December 2020): 542–560, <https://doi.org/10.30603/au.v20i2.3459>.

⁸ Faida Fidiani, "Penalties for Unregistered Marriage and Polygamy in Indonesia, Pakistan and Tunisia," *Sakina: Journal of Family Studies* 5, no. 1 (February 2021), <https://urj.uin-malang.ac.id/index.php/jfs/article/view/563>.

⁹ Dri Santoso and Muhamad Nasrudin, "Polygamy In Indonesia And Its Relevance To The Protection Of Women And Children In The Perspective Of Islamic Law Philosophy," *Akademika : Jurnal Pemikiran Islam* 26, no. 1 (June 2021): 121–136, <https://doi.org/10.32332/akademika.v26i1.2406>.

¹⁰ Muhammad Nasrullo et al., "Legal Protection for Women in Unregistered Polygamy: A Comparative Analysis of Polygamy Isbat," *Muwazah* 17, no. 2 (2025): 241–260, <https://doi.org/10.28918/muwazah.v17i2.8863>.

¹¹ Rahmi Nurtsani and Yuli Kasmarani, "Criminalization Of Polygamy," *Ta'zir: Jurnal Hukum Pidana* 7, no. 1 (June 2023): 34–47, <https://doi.org/10.19109/tazir.v7i1.17710>.

regarding its compatibility with Islamic law.¹² As stipulated in Islamic law, polygamy is not an absolute right for men but rather a conditional permissibility subject to the legal objectives (*maqāṣid*) and not merely the formal legality of the contract.¹³ In the Islamic law context, polygamy is neither an obligation nor a sunnah, but rather a strict, conditional legal leniency with justice as the primary and substantive requirement.¹⁴ Despite these stringent requirements, in practice, the implementation of polygamy leaves ongoing problems¹⁵, ranging from neglect of the rights of wives and children¹⁶, unfair income distribution¹⁷, high potential for family conflict¹⁸, and the psychological impact of polygamous marriage on women and children worldwide.¹⁹ Based on this reality, the state has introduced provisions in the latest Criminal Code that criminalize polygamy, which violates state law and cannot be interpreted as contrary to sharia.

Although the new Criminal Code does not prohibit polygamy, it is clearly punishable by criminal law if it is carried out in the presence of a legal impediment under the marriage law. Consequently, the criminalization of polygamy has become a new issue

¹² Alfitri Alfitri, Rijal Imanullah, and Aulia Rahman, "Unregistered Polygamy Validation: Isbat Nikah, Polygamy Permit, and Due Process of Law in Indonesian Religious Courts," *Ulumuna* 28, no. 1 (September 2024): 313–344, <https://doi.org/10.20414/ujis.v28i1.639>.

¹³ Supriadi and Nur Akifah Janur, "Polygamy in Family Law: Gender Perspectives and Its Implications for Women's Rights," *Humanisma : Journal of Gender Studies* 9, no. 1 (June 2025): 95–110, <https://doi.org/10.30983/humanisma.v9i1.9367>.

¹⁴ Denna Ritonga et al., "Polygamy: A Threat or Opportunity to The Islamic Family? (Sociology and Family Law Perspectives)," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (June 2025): 244–261, <https://doi.org/10.19109/nurani.v25i1.27389>.

¹⁵ Aminah Aminah and Asyharul Muala, "Analysis of Polygamy Law in Indonesia: Harmony between Islamic Law and State Law," *Indonesian Journal of Islamic Law* 6, no. 2 (2023): 1–17, <https://doi.org/10.35719/ijil.v6i2.2020>; Hamzah Siregar, Ibrahim Siregar, and Muhammad Arsad Nasution, "The Impact of Polygamy on Wives and Children as Reviewed in Law Number 1 of 1974 Concerning Marriage," *Jurnal Hawa : Studi Pengarus Utamaan Gender Dan Anak* 7, no. 2 (December 2025): 143–154, <https://doi.org/10.29300/hawapsga.v7i2.9215>.

¹⁶ 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, no. 3 (September 2016): 272–286, <https://doi.org/10.1080/13229400.2015.1086405>.

¹⁷ Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property."

¹⁸ Abdul Aziz, "Impact of Polygamy Practices in Urban Communities in Kramatjati, East Jakarta," *Mazahib* 24, no. 1 (June 2025): 131–155, <https://doi.org/10.21093/mj.v24i1.8978>.

¹⁹ Ismail Shaiful Bahari et al., "Psychological Impact of Polygamous Marriage on Women and Children: A Systematic Review and Meta-Analysis," *BMC Pregnancy and Childbirth* 21, no. 1 (December 2021): 823, <https://doi.org/10.1186/s12884-021-04301-7>.

because it is perceived to blur the boundaries between civil and criminal law. This gap has resulted in a limited understanding of whether the criminalization of polygamous marriages means that unregistered marriages are prohibited. Furthermore, it examines how the principles of *maqāṣid*, combined with socio-legal analysis, can be operationalized to create a more adaptive and human rights-friendly legal framework for Muslim families in the contemporary context. This reality demonstrates the importance of this study in unpacking the normative interpretation and its broader impact on unregistered polygamy in the Indonesian context.

This research fills the gap of the absence of research that explicitly integrates the criminalization of polygamy with a *maqāṣid al-sharī'ah* approach within the context of modern criminal law. Furthermore, the novelty of this research lies in its reconceptualization of state criminal law with *maqāṣid*-based justification in the discourse of criminalizing polygamy within modern penal policy. By addressing gaps in classical legal concepts and proposing innovative approaches to state criminal law as a form of modern collective *ijtihād* that aligns with the objectives of Islamic law, this study contributes to harmonizing religious norms with the modern legal system. The central research question guiding this study is, therefore, how does the criminalization of unregistered polygamy under KUHP 2026 function within Indonesia's legal system and can be justified within the framework of *maqāṣid al-sharī'ah*?

METHOD

This study employs normative legal research drawing on doctrinal and *maqāṣid* approaches to explain a deeper epistemological conflict between textualist interpretations of Islamic law and modern legal rationalities, emphasizing human rights, gender justice, and legal certainty in the discourse on unregistered polygamous marriages in Indonesia. The primary legal sources include statutes, the Indonesian Criminal Code 2026, the Marriage Law, relevant judicial doctrines, and government regulations. Secondary materials consist of classical and contemporary Islamic legal texts, scholarly works on *maqāṣid al-sharī'ah*, and socio-legal studies on polygamy and gender justice, including scientific

literature, institutional reports, and policy studies on Indonesia's legal marriage. The analysis is conducted through doctrinal interpretation and *maqāṣid*-based reasoning, focusing on the objectives of law rather than purely textual legality. In addition, this approach explains how *maqāṣid*-based reasoning is applied in interpreting positive legal norms.

By integrating Islamic legal philosophy with modern criminal policy theory, this research adopts an interdisciplinary approach characteristic of contemporary legal scholarship. The data are analyzed through content analysis of emerging forms of legitimacy in the Indonesian Criminal Code and their background, yielding an integrated understanding of how the issue of polygamy has long occupied a contested position at the intersection of religious norms, state law, and social justice discourse.

Finally, this study addresses researcher bias to obtain objective results, drawing on recent studies in the overall discussion and the study's issues. This approach ensures that the interpretation process remains critically and methodologically controlled, thereby contributing to the validity and credibility of the analysis. By emphasizing methodological clarity and rigor grounded in scientific principles, this study aims to provide a robust, actionable argument for the *maqasid*-based justification of criminalizing polygamy in modern criminal law.

RESULTS AND DISCUSSION

Polygamy and Legal Regulation under Indonesia's 2026 Criminal Code

Polygamy is a complex issue intertwined with religious, legal, and cultural issues in Indonesian society.²⁰ In Indonesia, despite Law No. 1 of 1974 concerning Marriage, which permits polygamy under strict conditions, including court approval and proof of justice,

²⁰ Fatimah Zuhrah, "Problems of Polygamy In Indonesia (Analysis of Law No. 1 of 1974 and KHI)," *Journal of Islam and Science* 3, no. 1 (2016): 1-17, <https://doi.org/10.24252/jis.v3i1.4377>; Suharti Suharti et al., "The Dynamics of Legal Protection in Indonesia Against the Role of the Second Wife," *Al-Hurriyah: Jurnal Hukum Islam* 10, no. 1 (June 2025): 1-16, <https://doi.org/10.30983/al-hurriyah.v10i1.8953>.

unregistered or invalid polygamous marriages continue to occur.²¹ The impact of unregistered polygamy has resulted in significant problems, including legal uncertainty, triggering domestic conflict, economic vulnerability, and social injustice, particularly affecting women and children.²²

In the new Criminal Code, provisions regarding marital offenses are set out in Chapter XIV, Criminal Acts Against the Origin and Practice of Marriage, which includes five articles: articles 401, 402, 403, 404, and 405.²³ Criminal provisions are formulated for marriage practices that violate the principles and provisions of valid marriage, including polygamy without permission or without fulfilling applicable legal requirements. Article 402 prohibits marriage when a valid marriage still presents a legal obstacle. This article stipulates that a person can be punished if they marry while still legally married, or if they marry someone who is. Furthermore, article 402 clarifies that polygamy practiced by intentionally concealing marital status from one's legal partner can be subject to a more severe penalty, up to four years and six months in prison. Clearly, this article sanctions the practice of multiple marriages or illegal polygamy that violates legal provisions.

Meanwhile, article 403 provides grounds for prosecuting anyone who marries without notifying them of any legal impediments, thereby declaring the marriage invalid. A legal impediment is a marriage requirement that must be met for a marriage, as stipulated in the marriage law, including marital status, blood relationship, permission, or administrative requirements. Article 403 clearly prosecutes fraud or dishonesty related to the legal requirements for marriage. In addition, article 404 regulates the obligation to report important civil status events, including births, marriages, divorces, and deaths. Article 404 emphasizes the importance of population administration and ensuring the legal

²¹ Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property."

²² Sukiati and Mohd Roslan Mohd Nor, "Adaptation of Polygamous Couples: The Experiences of Living Indonesian Women," *Asian Women* 39, no. 4 (December 2023): 59-77, <https://doi.org/10.14431/aw.2023.12.39.4.59>.

²³ Hendro Widodo, "A Model for Preventing Domestic Violence Using an Early Warning System in Criminal Law Policy," *Nusantara: Journal of Law Studies* 5, no. 1 (March 2026): 147-170, <https://doi.org/10.66325/nusantaralaw.v5i1.184>.

status of families. These three articles form a framework for family legal protection, aiming to prevent unlawful marriages, protect couples from marital status fraud, guarantee legal certainty and family rights, and strengthen orderly population administration. The findings of this study indicate that these provisions represent the state's attempt, through modern law, to prevent the practice of illegal polygamy and ensure transparency and legality within the institution of marriage.

The new Criminal Code does not absolutely prohibit polygamy or unregistered marriages. However, it does criminalize situations where such practices are carried out without legal barriers under the marriage law, such as polygamy without the wife's consent and without the required legal procedures. The provisions in articles 402 and 403 primarily regulate criminal penalties for people who enter into marriages when, in fact, the marriage should not have been carried out due to an obstacle. The findings of this research demonstrate that the practice of polygamy without proper procedures is often associated with injustices against women and children, especially when there is no wife's consent or legal registration. Importantly, the Criminal Code stipulates that prosecution may be initiated only on a report from the injured party. In other words, offenses punishable under criminal law within the family are based on complaints and can be prosecuted on a report from the injured party.²⁴ This reflects a balance between law enforcement and every citizen's right to privacy, while avoiding excessive criminalization and allowing for peaceful resolution.

Furthermore, the provisions in the 2026 Criminal Code do not criminalize polygamy as a sharia institution; rather, what is criminalized are violations of legal barriers to marriage, such as the lack of court permission, the lack of the wife's consent, the potential for fraud, and injustice. This falls under the category of *sadd al-dhara'i* under the *maqasid* (law of harm). The findings of this study demonstrate that the new Criminal Code does not criminalize polygamy as long as it is carried out in accordance with statutory

²⁴ Ahmad Jamaludin Jambunanda, "Transformation of Classical Law to Contemporary in Islamic-Based Marriage Law to Respond to Legal Developments in Indonesia," *Al Ahkam* 19, no. 2 (December 2023): 152-172, <https://doi.org/10.37035/ajh.v19i2.9551>.

provisions. Polygamy can be criminalized if it is carried out in violation of statutory provisions, for example, polygamy carried out without court permission or without registration, commonly known as an unregistered marriage.

Criminalization of Polygamy: Epistemological Tension between Sharia and State

The findings of this study indicate that the ratification of Indonesia's new 2026 Criminal Code marks a historic transformation in the national legal system.²⁵ Indonesian socio-cultural values, human rights principles, and modern legal rationality are reflected in the issue of polygamy, enabling a shift toward preventive measures by imposing criminal penalties on perpetrators of illegal polygamy. In fact, although Islam permits polygamy with strict conditions, it is still practiced by men.²⁶

The presence of the new Criminal Code then confirms that rights-based legal norms emphasizing gender equality, legal certainty, and family protection can be applied to polygamy issues. This study demonstrates a paradigm shift from tolerance for religiously based marriage practices to a modern legal framework embedded in criminal law. Furthermore, the criminal provisions related to polygamy in the National Criminal Code present an important discourse regarding the epistemological tension between sharia norms and modern state authority. This tension does not always manifest as direct conflict, but rather as differences in sources of legitimacy, methods of legal reasoning, and regulatory objectives.²⁷ Epistemological tension refers to differences in the basis of legal knowledge and authority, where sharia is derived from revelation, Islamic jurisprudential tradition, and the *ijtihad* of ulama.²⁸ Meanwhile, modern state law is derived from the constitution,

²⁵ Liantha Adam Nasution et al., "The Persistence of Victim Blaming in Child Rape Trials: A Victimological Analysis of the Banjarmasin High Court Acquittal," *Nusantara: Journal of Law Studies* 5, no. 1 (February 2026): 61-83, <https://doi.org/10.5281/zenodo.18662151>.

²⁶ Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property."

²⁷ Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (April 2023): 190-214, <https://doi.org/10.1080/10383441.2023.2243772>.

²⁸ Mansur Ahmad et al., "Sociocultural Dynamics of Islamic Legal Reform Across Muslim-Majority Countries: A Comparative Perspective," *DIKTUM: Jurnal Syariah Dan Hukum* 23, no. 2 (May 2025): 214-31, <https://doi.org/10.35905/diktum.v23i2.13072>.

democratic legislation, and the rationality of positive law.²⁹ On the issue of polygamy, the two systems are not always in conflict, but they have different normative logics.

Islam does not position polygamy as an obligation, but rather as a conditional permissibility (*mubah muqayyad*) bound by strict moral and justice requirements. The primary basis for discussions of polygamy is often referred to in Surah al-Nisa' [4]: 3, which permits men to marry up to four wives if they can act justly. However, this verse cannot be read in isolation from other verses, particularly Surah al-Nisa' [4]: 129, which emphasizes that humans are fundamentally incapable of being completely just to their wives.³⁰

The legal dispensation regarding the permissibility of polygamy in Islam demonstrates the divergence between traditional legal permissions and the contemporary need to protect women and children, considering that strict, ethical, and equitable implementation is essential to fulfill the ultimate goals of Islam. Therefore, the legal basis for the permissibility of polygamy in Islamic marriage is that it is not motivated by biological sex and pleasure, but only by social and human motives, as interpreting "ability to act justly" as a basis for the exclusion of polygamy is highly difficult.³¹ Then, the permissibility of polygamy is not a recommendation but rather a solution offered under special circumstances for husbands who desperately need it and meet certain requirements. Polygamy is seen as a social solution under certain circumstances. However, polygamy in

²⁹ Nicolás Jorge Negri, "The Constitution as a Political Program and Legal System: An Integral Analysis in Service of the Common Good of Individuals," in *Constitutional Law - Emerging Trends and Perennial Debates [Working Title]* (IntechOpen, 2025), <https://doi.org/10.5772/intechopen.1011807>; Ramlani Lina Sinaulan, Rahmat Saputra, and Sugeng Sugeng, "The Constitutional Court as a Positive Legislative through the Living Constitution Approach," *International Journal of Law and Society* 2, no. 4 (October 2025): 70-84, <https://doi.org/10.62951/ijls.v2i4.780>.

³⁰ Aida Humaira et al., "Polygamy in Islamic Law and Contemporary Muslim Societies: A Maqāṣid-Oriented Systematic Review," *Jurnal Fuaduna : Jurnal Kajian Keagamaan Dan Kemasyarakatan* 9, no. 2 (December 2025): 207-218, <https://doi.org/10.30983/fuaduna.v9i2.10487>.

³¹ Aris Baidhowi, "Hukum Poligami Dalam Perspektif Ulama Fiqh," *Muwazah* 4, no. 1 (July 2012): 58-69, <https://doi.org/10.28918/muwazah.v4i1.9993>.

Islam is not an absolute right for men³², but rather a conditional permissibility subject to legal objectives (*maqasid*), not merely the formal legality of the marriage contract.³³

Meanwhile, under Indonesian law, polygamy is regulated through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, which emphasizes that polygamy is permitted with limitations. The state adds administrative procedures and court oversight, and justice and family protection are primary considerations. Furthermore, Indonesia is neither a purely religious nor a purely secular state, but a state governed by the rule of law that recognizes religious values. The new Criminal Code (KUHP) then introduced criminal sanctions for violations of procedural law.

In this context, tensions arise when a marriage is valid under religious law but not under state law.³⁴ The state institutionalizes justice, which, in Islamic jurisprudence, is ethical. The state places polygamy within the administrative and criminal legal regime to provide protection for women and children, ensure legal certainty for the family, prevent neglect, and regulate orderly population administration. This means that the state's rationale for criminalizing illegal polygamy is not to criminalize polygamy itself, but rather acts of marital deception, marriage without court approval, administrative manipulation, and harm to wives and children. The findings of this study indicate that criminalization stems from a rationale for social protection, not a rejection of religious norms. The theoretical implication is clearly that state law neither restricts sharia nor criminalizes religious practices. State law, through modern criminal law in the Criminal Code (KUHP), should be positioned as regulatory protection for women, as part of the state's oversight role as contextual *ijtihad*. Thus, this dynamic reflects the ongoing negotiation between

³² Gintare Sereikaite Motiejune, "Polygamy in Islam: A Study on Its Religious Justifications and Empowerment of Women Within Islamic Teachings," *QiST: Journal of Quran and Tafseer Studies* 4, no. 1 (January 2025): 59-74, <https://doi.org/10.23917/qist.v4i1.6948>.

³³ Alfi Syahrin, "The Polygamy Essence According To Quraish Shihab 'Reject Prejudice, Eliminate Confusion,'" *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 21, no. 1 (June 2021): 147-158, <https://doi.org/10.19109/nurani.v21i1.8489>.

³⁴ Ahmad Masum et al., "The Role of Syariah Penal Code (Cap. 275) in Determining Criminal Responsibility for Minors in Brunei Darussalam," *Nusantara: Journal of Law Studies* 5, no. 1 (April 2026): 307-330, <https://doi.org/10.66325/nusantaralaw.v5i1.190>.

religious normativity and modern legal rationality in contemporary Indonesian Muslim society.

Criticism of Legalistic Jurisprudence: Shifting Polygamy from Permissibility to Conditionality

In Islamic jurisprudence, polygamy is permitted but subject to strict moral and material conditions, particularly those related to justice.³⁵ In fact, the practice of polygamy, formally declared legitimate by religion, results in a failure to uphold justice. This reality suggests that this practice tends to negate the ethical legitimacy of polygamy. In Islamic legal provisions, polygamy is only regulated as a normative ideal and is not interpreted in contextual terms as an ethical standard considering social realities and empirical harms.³⁶ In this initial conclusion, this study shows that the configuration depicted between Islamic law and the criminalization of polygamy largely stems from a reductionist understanding of sharia as a static set of permits. This reductionist understanding is not based on the tendency of thought in the formation of Islamic law, which is dynamic in a search for models that, along the way, adapt to cross-cultural translations by celebrating hybridity among emerging intellectual currents. Moreover, the classical reading of the permissibility of polygamy ignores the *maqāṣid al-shari'ah*, which emphasize results, social welfare, and justice.

The issue of state regulation through criminal law for polygamists who are legally prevented from doing so can be interpreted as a form of collective *ijtihād* that responds to contemporary social challenges. Furthermore, state *ijtihād* in this context is based on the *maqāṣid* of sharia. This is in line with the spirit of almost all discussions of Islamic law in the construction of *maqasid*, which focus on *ijtihād*, so that *maqasid* has the initial goal of

³⁵ Adde Ramadhani, Abdul Halim, and Risnita Risnita, "Polygamous Marriage Law Reform in Indonesia: A Socio-Legal Analysis of Substantive Justice in Islamic and National Law," *International Journal of Law and Society* 3, no. 2 (February 2026): 58–65, <https://doi.org/10.62951/ijls.v3i2.891>.

³⁶ Tanjung et al., "A Normative Study on Polygamy and Gender Justice in Islamic Family Law."

opening a sufficiently broad space for *ijtihād*.³⁷ In this regard, the state is reconstructing sharia by shifting the debate from “permissible or haram” to “justice or harmful”. The theoretical implication is that *maqasid* serves as a framework for *ijtihād* across its variations, harmonizing Islamic law and national law, demonstrating that modern criminal law can function as an instrument of *maqasid*. Thus, *ijtihād* carried out through state regulation of modern criminal law can encourage innovative thinking and legislation as a legislative vehicle for *maqasid*-oriented *ijtihād*. This framework was born as a critique of legalistic fiqh to correct the textual approach that ignores the social impact of polygamy itself.

The 2026 Criminal Code is not a secular rejection of religious norms, but rather a legal policy aligned with the principle of justice, prioritizing the prevention of harm over formal permissibility. Punishment for polygamous practices that violate modern criminal law can be interpreted as a spirit of shifting the understanding of polygamy from mere permissibility to strict requirements. This approach aligns with modern *maqasid* theorists who advocate adaptive legal reasoning based on human dignity and social justice.

***Maqasid*Based Justification of Criminalization of Polygamy within Modern Penal Policy**

Polygamy practiced without court permission, official registration, and legal protection can pose multidimensional risks that extend beyond private marital relationships to public welfare and the rule of law.³⁸ The most fundamental is the harm to women and children born from such marriages. Within this framework, criminal sanctions introduced in the spirit of modern criminal law reform serve not only as a punitive mechanism but also as a preventive instrument to prevent ongoing social harm. By preventing unlawful polygamy, the law maintains family integrity and protects vulnerable parties. This preventive function aligns with the *maqasid* imperative to protect lineage and

³⁷ Mohammad Hashim Kamali, *Maqasid Al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective* | ICR Journal, October 18, 2020, <https://icrjournal.org/index.php/icr/article/view/647>.

³⁸ Nisrina Durratul Hikmah and H. Ahmad Muhasim, “Aspek Masalah Dalam Praktik Poligami Perspektif Maqasid Al-Syari’ah Dan Regulasi Hukum Keluarga Islam Di Indonesia,” *Tasyri’ : Journal of Islamic Law* 4, no. 2 (July 2025): 911–946, <https://doi.org/10.53038/tsyr.v4i2.225>.

human well-being.³⁹ Thus, criminal law functions as a protective shield rather than as moral coercion. Criminalization of polygamists who violate the rules can be interpreted as protecting human dignity (*hifz al-karamah*) and part of substantive justice. Thus, this study demonstrates that the criminalization of unlawful polygamy constitutes a *maqāṣid*-oriented penal policy and a form of state-led *ijtihad*.

In this regard, the prohibition of deviant polygamous practices broadly reflects the orientation of Islamic law (*maqāṣid al-sharia*), shifting from textual legality to the protection of human rights and human dignity, as is the goal of the *maqāṣid al-sharia*. A further impact is that the state, through modern criminal law instruments, may restrict or even criminalize permissible practices if they cause social harm. In the *maqasid sharia*, this is known as the principle of *dar'u al-mafasadah muqaddam 'ala jalb al-maslahah*, where preventing harm takes precedence over achieving benefit.⁴⁰ Meanwhile, according to Imam al-Shatibi, *maqasid al-Sharia* is the five main objectives of Islamic law (*al-dharuriyyat al-khams*), namely protecting religion (*hifz al-din*), life (*hifz al-nafs*), reason (*hifz al-aql*), descendants (*hifz al-nasl*), and property (*hifz al-mal*). This concept protects basic human rights and prevents harm, with *hifz al-din* as the main priority and *hifz al-nafs* as the protection of the soul. This concept aims to achieve *falah* (happiness) and *hayah thayyibah* (a good life) through the principle of balance between spiritual and material needs.⁴¹

³⁹ Muhammad Iqbal Juliansyahzen and Ocktoberinsyah, "The Contemporary Maqāṣid Sharia Perspective on Sexual Violence Provisions in the Indonesian Law Number 12 Year 2022," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 25, 2022, 269–286, <https://doi.org/10.24090/mnh.v16i2.7018>.

⁴⁰ Ahmad Musadad et al., "Reorienting Jamāluddīn 'Aṭīyyah's Maqāṣid al-Ushrah in the Regulation of Polygamy in the Indonesian Compilation of Islamic Law," *Sakina: Journal of Family Studies* 9, no. 4 (December 2025): 429–447, <https://doi.org/10.18860/jfs.v9i4.19984>.

⁴¹ Edi Kurniawan et al., "Recent Studies on the Maqāṣid Al-Sharī'ah of Abū Ishāq al-Shāṭibī: A Systematic Literature Review," *AJIS: Academic Journal of Islamic Studies* 10, no. 1 (May 2025): 1–26, <https://doi.org/10.29240/ajis.v10i1.11282>; Al Ikhlas Al Ikhlas et al., "The Concept of Maqasid Al-Shariah As an Instruments of Ijtihad According to Imam al-Shatibi in al-Muwafaqat Fi Ushuli Al-Shariah," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 23, no. 2 (December 2021): 206–219, <https://doi.org/10.22373/jms.v23i2.10138>; Muh Ilham Azis et al., "Maqāṣid Al-Sharī'ah Theory By Imam Al-Syāṭibī," *Anayasa: Journal of Legal Studies* 2, no. 1 (July 2024): 17–34, <https://doi.org/10.61397/ays.v2i1.191>.

More specifically, protecting the dignity of women and children must be prioritized to prevent them from suffering the adverse consequences of unregulated polygamy, including economic insecurity, psychological distress, and reduced social status. Therefore, legal regulation serves to uphold human dignity and gender justice by ensuring fairness, transparency, and accountability within the institution of marriage. Furthermore, complaint-based or restorative legal mechanisms allow victims to seek redress without automatically triggering increased penalties. These mechanisms balance protection and proportionality, allowing the legal system to respond to harm while maintaining opportunities for reconciliation and restorative justice. This approach aligns with restorative criminal justice theory and the *maqasid* principle, which promote social harmony and prevent further harm. Therefore, regulating and criminalizing unlawful polygamy must be understood as a multidimensional legal response aimed at protecting family well-being, preserving dignity, and ensuring justice in accordance with the *maqasid* al-shariah and contemporary legal principles.

From the perspective of the *maqāṣid al-shariah*, unregulated polygamy threatens at least three fundamental objectives: *hifz al-nasl* (protection of lineage), *hifz al-nafs* (protection of human dignity and well-being), and *hifz al-mal* (protection of property and economic security). When marital status is unclear, children face difficulties in civil registration and inheritance rights, while couples can experience economic neglect and social marginalization.⁴² This study underscores that criminalization of polygamy serves three purposes: preventive, aiming to prevent harmful polygamy; protective, aiming to protect women and children; and restorative, aiming to provide a space for victims to complain. These three functions align with the *maqāṣid al-sharia* instrument as collective *ijtihād* in the modern context.

In the context of the preventive function, criminalization is intended as a deterrent against social harm and positions punishment as an instrument of *hifz al-nasl* and *hifz al-*

⁴² Muhammad Alifza and Muhammad Amin Nasution, "Integrating Maqāṣid Al-Sharī'ah into the Legal Framework of Child Adoption in Indonesia," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, June 27, 2025, 372–385, <https://doi.org/10.24252/al-risalah.vi.58136>.

nafs.⁴³ Meanwhile, the protective function lies in efforts to protect women and children.⁴⁴ Consequently, criminalizing polygamy aims to prevent social damage, gender inequality, and protect the rights of wives and children, such as neglect of maintenance, family conflict, and social vulnerability.⁴⁵ Illegal polygamy is considered to damage the family structure and trigger injustice, necessitating state intervention to maintain public order. Once again, the focus of criminalization is on the “illegal” aspects of polygamy that do not comply with national marriage law requirements. In social practice, polygamy without legal procedures often places women in a vulnerable position due to unequal power relations.⁴⁶ In practice, women often lack the bargaining power to reject or challenge polygamous practices that lack transparency. This practice exacerbates gender inequality, leads to legal and economic injustice, and violates women’s human rights.⁴⁷ Within a patriarchal structure, women are often considered inferior and placed in a difficult position to challenge their husbands’ wishes to practice polygamy, even without their consent or transparency.

Meanwhile, from an economic perspective, polygamy impacts women, who often experience marginalization, double burdens, and economic vulnerability because justice within the family is difficult to achieve.⁴⁸ This results in insecure maintenance rights, problematic access to inheritance, and difficulty enforcing legal protections against neglect. This reality is rooted in unequal social and cultural constructs, which often position women

⁴³ Ziba Mir-Hosseini, “Justice and Equality and Muslim Family Laws: New Ideas, New Prospects,” in *Sharia and Justice: An Ethical, Legal, Political, and Cross-Cultural Approach*, ed. Abbas Poya (De Gruyter, 2018), 73–104, https://www.degruyterbrill.com/document/doi/10.1515/9783110574593-005/html?lang=de&srsid=AfmBOopiB1uTz1k_TPHos5TYVNN_9fThAtRWfh0uOLV_saIqx5aShtX.

⁴⁴ Andi Silva Quadsajul et al., *Reformasi Hukum Keluarga Islam Berbasis Maqasid Al-Syari’ah : Upaya Perlindungan Terhadap Anak Di Bawah Umur | Jurnal Hukum, Politik Dan Ilmu Sosial*, January 8, 2026, <https://ejurnal.politeknikpratama.ac.id/index.php/jhps/article/view/5765>.

⁴⁵ Dawn M. Szymanski, Lauren B. Moffitt, and Erika R. Carr, “Sexual Objectification of Women: Advances to Theory and Research 1ψ7,” *The Counseling Psychologist* 39, no. 1 (January 2011): 6–38, <https://doi.org/10.1177/0011000010378402>.

⁴⁶ Karen R. Blaisure and Katherine R. Allen, “Feminists and the Ideology and Practice of Marital Equality,” *Journal of Marriage and Family* 57, no. 1 (1995): 5–19, <https://doi.org/10.2307/353812>.

⁴⁷ Sofyan Rauf, Fajar Yunus, and Hasjad Hasjad, “Analisis Poligami Ilegal Berdasarkan Pasal 279 KUHP Dengan Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan,” *Innovative: Journal Of Social Science Research* 4, no. 4 (August 2024): 11920–11933, <https://doi.org/10.31004/innovative.v4i4.14534>.

⁴⁸ Marie Boltz and Isabelle Chort, “The Risk of Polygamy and Wives’ Saving Behavior,” *The World Bank Economic Review* 33, no. 1 (2019): 209–230.

merely as objects in marriage decisions, necessitating a single law enforcement instrument through modern criminal law. Therefore, the criminalization provisions in the new Criminal Code represent a legal reform aimed at ensuring gender justice in marriage. Therefore, criminalization is an effort to protect women's dignity, justice, and civil rights, as manifestations of *hifz al-* and *hifz al-nafs*. *Hifz al-nasl* and *hifz al-nafs* are the main pillars of the *maqāṣid al-sharia* (the principle of Islamic law)⁴⁹ used to justify the illegal restriction and criminalization of polygamy. Furthermore, the criminalization of unregistered polygamy helps prevent acts that are emotionally and physically harmful. Finally, the criminalization of polygamy in Indonesian positive law is aimed at ensuring that no soul is wronged (*hifz al-nafs*) and that the rights of descendants are not guaranteed (*hifz al-nasl*).

Lastly, the restorative function lies in the complaint-based offense, which provides a space for victims, particularly women and children, to file complaints. The restorative function in criminalizing illegal polygamy focuses on restoring family relationships and protecting the rights of wives and children, rather than simply punishing perpetrators physically or retributively. This is reflected in several articles related to the practice of extramarital affairs, including the complaint offense, which means prosecution is only carried out upon a report from the aggrieved party. This reflects a balance between law enforcement and citizens' privacy rights, enabling dialogue and mediation among the husband, the first wife, and other relevant parties. At this point, the complaint offense in polygamy cases aims to secure a fair agreement for the family's future, rather than simply processing a criminal report. In other words, rather than immediately imposing a prison sentence that risks cutting off the family's livelihood, the restorative approach emphasizes harmonious family relationships.

Table 1: *Maqasid*-Based Justification of Criminalization of Polygamy

Maqāṣid Principle	Core Objective	Social Risks from Unregulated Polygamy	Modern Penal Policy
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⁴⁹ Jasser Auda, *Maqasid AlShariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought (IIIT), 2008).

<i>Ḥifẓ al-Dīn</i> (Protection of religion)	Ensuring ethical family conduct aligned with justice and responsibility	Misuse of religious justification to legitimize injustice	State regulation prevents abuse of religious norms for exploitative practices
<i>Ḥifẓ al-Nafs</i> (Protection of life & dignity)	Safeguarding human dignity and psychological well-being	Emotional harm, domestic violence, psychological trauma, abandonment	Criminalization deters harmful conduct and protects the dignity of wives and children
<i>Ḥifẓ al-Nasl</i> (Protection of lineage & children)	Legal certainty of lineage and protection of children's rights	Unclear legal status of children, neglect, identity and inheritance disputes	Legal enforcement ensures legitimacy, recognition, and child protection
<i>Ḥifẓ al-Māl</i> (Protection of property & economic security)	Protection of financial rights within family structures	Economic neglect, denial of maintenance, inheritance disputes	Sanctions ensure accountability for financial obligations
<i>Ḥifẓ al-'Aql</i> (Protection of mental well-being & social stability)	Preservation of mental health and social harmony	Psychological stress, family conflict, social stigma	Preventive criminalization reduces destabilizing family practices
<i>Maṣlaḥah 'Āmmah</i> (Public interest)	Promotion of collective welfare and social justice	Growth of informal marriages undermining legal order	Criminalization maintains legal order and public welfare

Source: *author's interpretation (2026)*

The table demonstrates that the criminalization of unlawful polygamous marriages under Indonesia's contemporary penal policy is closely aligned with the objectives of *maqāṣid al-Sharī'ah*. Each of the five essential protections (*al-ḍarūriyyāt al-khams*)—religion (*ḥifẓ al-dīn*), life and human dignity (*ḥifẓ al-nafs*), lineage (*ḥifẓ al-nasl*), property (*ḥifẓ al-māl*), and mental well-being (*ḥifẓ al-'aql*)—addresses specific social harms arising from unregulated polygamy, including the misuse of religious authority, psychological abuse, uncertainty of children's legal status, economic neglect, inheritance disputes, and family instability. These objectives are further reinforced by the principle of *maṣlaḥah 'āmmah* (public interest), which emphasizes the state's responsibility to preserve legal order and social welfare. Accordingly, criminal sanctions are not intended to prohibit polygamy as a lawful institution under Islamic law, but rather to prevent exploitative and unauthorized practices

that undermine justice, family protection, and public welfare, thereby reflecting a *maqāṣid*-oriented approach to contemporary criminal law reform.

CONCLUSION

This study concluded that Islamic law is moving beyond the criminalization of the unregistered polygamous marriage. This research also concluded that the criminalization of unlawful polygamy constitutes a form of state-led *maqāṣid*-oriented *ijtihād* within modern criminal law policy. In addition, this study extends the concept of *maqāṣid* as a justificatory framework within modern criminal law. Thus, punishment for polygamous practices that violate modern criminal law is a spirit of shifting the understanding of polygamy from mere permissibility to strict requirements. Furthermore, the theoretical contribution of this research lies in identifying that the criminalization of unlawful polygamy in the 2026 Criminal Code can be justified under sharia, provided it does not criminalize polygamy as an Islamic teaching, is oriented towards protecting human rights and dignity, and prioritizes substantive justice rather than mere legal certainty. Thus, the 2026 Criminal Code can be understood not as a secularization of family law, but rather as a modern state's *ijtihād* to realize the goals of sharia in the contemporary social context.

Despite the study's limited doctrinal interpretation and *maqāṣid*-based reasoning, it provides insight into the deep understanding that the criminalization of unregistered and unauthorized polygamy under Indonesia's criminal code 2026 is not inherently incompatible with Islamic law. However, the punishment outlined in the Criminal Code is a legitimate legal strategy to safeguard public welfare and protect vulnerable individuals, particularly women and children. By reconceptualizing state criminal law as a vehicle for achieving Sharia goals that prioritize humanity, beyond merely a textualist understanding of Islamic jurisprudence, this study contributes to a comprehensive understanding of the harmonization of religious norms and modern legal systems. Ultimately, this study encourages further research and invites comparative inquiries into the integration of *maqāṣid al-sharia* into criminal law policy analysis to reconcile Islamic law and state regulation.

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AUTHOR CONTRIBUTIONS STATEMENT

Wildani Hefni contributed to the conceptualization of the study, the development of the research framework, the literature review, data interpretation, the comparative analysis of scholarly perspectives, the articulation of critical arguments, and the refinement of the theoretical analysis. Meanwhile, Qurrotul Uyun analyzed the relationship among state authority, criminal legislation, and Islamic normativity, focusing on the modern regulatory state, in which legal norms are shaped not only by textual interpretation but also by institutional responsibility, public order, and social accountability. Furthermore, Sabarudin Ahmad and Umar Chamdan played a key role in drafting, revising, and refining the manuscript to ensure clarity, coherence, and academic rigor.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interest in the publication of this article. The authors have contributed independently and objectively, without any subjective judgment or institutional or personal interests that could influence the integrity or substance of this study.

AI USAGE STATEMENT

AI tools were used solely for language editing and formatting. All ideas, analyses, interpretations, and conclusions are entirely the authors' own, and all AI-assisted outputs were reviewed to ensure academic integrity. The authors reviewed and verified all AI-assisted outputs to ensure accuracy, originality, and alignment with academic integrity

standards. The author retains full responsibility for the originality, accuracy, and academic integrity of this paper.

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