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Progressive Judicial Ijtihad in a Polygamy Case: From Normative Legalism to the Best Interests of the Family (A Study of Batang Religious Court Decision No. 239/Pdt.G/2026/PA.Btg)

Ijtihad Yudisial Progresif dalam Kasus Poligami: Dari Legalisme Normatif menuju Kepentingan Terbaik Keluarga (Studi atas Putusan Pengadilan Agama Batang Nomor 239/Pdt.G/2026/PA.Btg)

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Abstract: This study examines the progressive ijtihad of the judges in Decision No. 239/Pdt.G/2026/PA.Btg, focusing on the tension between the statutory grounds for granting permission to practice polygamy and the principle of legal protection for family members. The Panel of Judges granted the petition, demonstrating an approach that sought to respond to sociocultural realities while providing legal certainty oriented toward the public interest. This study employs a qualitative case-study design with a juridical-analytical approach, drawing on documentary analysis and semi-structured interviews with two judges involved in the case. The findings indicate that the judges' reasoning was oriented toward substantive justice and the protection of family welfare (*maṣlaḥah al-usrah*), although this approach raised questions regarding the application of the statutory grounds stipulated in Article 4(2) of the Marriage Law. These findings highlight the role of judicial discretion in examining and adjudicating cases, particularly when the application of statutory provisions raises questions

concerning their adequacy in addressing concrete social circumstances. This study contributes to the contextual understanding of family welfare in Islamic family law, particularly by highlighting the importance of protecting children's rights and strengthening family relationships through the framework of *maṣlaḥah al-usrah*.

Keywords: Polygamy, Progressive Ijtihad, Judicial Reasoning, *Maqāṣid al-Usrah*, Family Welfare.

Abstrak: *Penelitian ini mengkaji ijtihad progresif para hakim dalam Putusan No. 239/Pdt.G/2026/PA.Btg, dengan fokus pada ketegangan antara dasar hukum pemberian izin untuk melakukan poligami dan prinsip perlindungan hukum bagi anggota keluarga. Majelis Hakim mengabulkan permohonan tersebut, yang menunjukkan pendekatan yang berusaha merespons realitas sosiokultural sekaligus memberikan kepastian hukum yang berorientasi pada kepentingan umum. Penelitian ini menggunakan desain studi kasus kualitatif dengan pendekatan yuridis-analitis, yang mengandalkan analisis dokumen dan wawancara semi-terstruktur dengan dua hakim yang terlibat dalam kasus tersebut. Temuan menunjukkan bahwa pertimbangan para hakim berorientasi pada keadilan substantif dan perlindungan kesejahteraan keluarga (maṣlaḥah al-usrah), meskipun pendekatan ini menimbulkan pertanyaan mengenai penerapan dasar hukum yang diatur dalam Pasal 4 ayat (2) Undang-Undang Perkawinan. Temuan ini menyoroti peran diskresi yudisial dalam memeriksa dan mengadili perkara, terutama ketika penerapan ketentuan perundang-undangan menimbulkan pertanyaan mengenai kecukupannya dalam menangani keadaan sosial konkret. Penelitian ini berkontribusi pada pemahaman kontekstual mengenai kesejahteraan keluarga dalam hukum keluarga Islam, khususnya dengan menyoroti pentingnya melindungi hak-hak anak dan memperkuat hubungan keluarga melalui kerangka maṣlaḥah al-usrah.*

Kata kunci: *Poligami, Ijtihad Progresif, Penalaran Yudisial, Maqāṣid al-Usrah, Kesejahteraan Keluarga.*

A. INTRODUCTION

The debate over polygamy has become a distinct controversy—both theologically and anthropologically—within the discourse on Islamic family law in Indonesia.[1] Husein Muhammad employs a contextual-progressive paradigm that combines the principles of fiqh, maqashid al-sharia, and a social hermeneutical

[1] Asyharul Aminah dan 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.

approach to understand the permissibility of polygamy in the textual sources.[2] Monogamy is generally regarded as the normative marital ideal in Islamic family law, whereas polygamy is permitted subject to specific conditions and restrictions.[3] Women in polygamous marriages tend to report higher levels of psychological distress and somatic symptoms, poorer family functioning, and lower marital satisfaction than women in monogamous marriages.[4] According to Statistics Indonesia (BPS), the 2025 *Statistical Yearbook of Indonesia* reported 849 divorce cases attributed to polygamy in 2024, ranking it as the tenth most frequently reported cause among 516,344 divorce cases.[5]

Islamic law permits polygamy subject to the husband's ability to fulfill his financial obligations and treat his wives fairly.[6] The Indonesian state seeks to protect the rights of the existing wife by imposing additional requirements, including her consent and prior authorization from the Religious Court.[7] Practicing polygamy without obtaining the required court authorization may undermine the legal protection afforded to women and raise concerns about justice and legal certainty.[8] Polygamy is treated in certain Islamic legal interpretations as a conditional concession (*rukhṣah*), subject to the requirements and limitations established by Islamic law.[9] The regulations permitting polygamy in Indonesia

[2] M. Haris Abdul Hakim Aminatur Rosidah, "Poligami Di Indonesia: Perbandingan Pemikiran Tekstual Hafidin Dan Kontekstual Progresif Husein Muhammad," *Mahakim Journal of Islamic Family Law* 9, no. 1 (2025): 24–45, https://doi.org/https://doi.org/10.30762/mahakim.v9i1.666.

[3] Tika Anggraini Nasaiy Azis, Rispalman, "Polygamy in the Perspective of Tafsīr Al-Aḥkām and Islamic Law: An Examination of the Gayo Luwes Community in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1682–1707, https://doi.org/10.22373/sjhk.v7i3.20021.

[4] Hatice Çeçen-Çelik dan Sabiha Tüysüz, "Women's Experiences in Polygamous Marriages: A Qualitative Examination of Kuma in the Context of Şanlıurfa, Türkiye," *Family Relations* 75, no. 3 (2026): 2018–2038, https://doi.org/https://doi.org/10.1111/fare.70111.

[5] Central Bureau of Statistics of the Republic of Indonesia, "Statistical Yearbook of Indonesia 2025," vol. 53 (Jakarta: BPS-Statistics Indonesia, 2025).

[6] B Ritonga, Denna Syafuri and Ahmad Jamaludin Zulfikar, Faisal Tarihoran, Nafan Jambunanda, "Polygamy: A Threat or Opportunity to The Islamic Family? (Sociology and Family Law Perspectives)," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 244–61, https://doi.org/https://doi.org/10.19109/nurani.v25i1.27389.

[7] Dahlia Haliah Ma'u, "The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia," *Samarah* 7, no. 2 (2023): 669–86, https://doi.org/10.22373/sjhk.v7i2.8519.

[8] Adress Prawira and Hannah Neng, "Reintepretasi Poligami Dalam Diskursus Islam : Studi Komparasi Pemikiran Siti Musdah Mulia Dan Asghar Ali Engineer," *Jurnal Musawa* 22, no. 2 (2023): 161, https://doi.org/10.46773/imtiyaz.v5i2.149.5.

[9] Diana and Khoiriyah, "Tafsir Aplikatif : Poligami Dalam Prespektif Ulama Klasik Dan Kontemporer," *Mukaddimah: Jurnal Studi Islam* 9, no. 1 (2024): 95.

reflect the state's efforts to address contemporary social challenges through a progressive, welfare-based approach to Islamic law.[10]

Religious Courts have the authority to examine and rule on applications for permission to practice polygamy as part of their jurisdiction over marriage matters.[11] In exercising this authority, judges must consider the grounds for the application as stipulated in Article 4(2) as well as the requirements set forth in Article 5 of the Marriage Law.[12] Previous studies on polygamy authorization indicate that judicial reasoning may extend beyond a literal interpretation of statutory provisions to include an assessment of family circumstances and the potential legal consequences of granting or denying a petition.[13] Several previous studies have examined judicial considerations in granting polygamy petitions under specific circumstances. Makarimi and Nuruddien, for instance, analyzed a polygamy permit granted on the grounds of a wife's menopause from the perspective of al-Shāṭibī's concept of *maṣlaḥah*.[14] Luthfi and colleagues examined the principle of justice in a polygamy decision issued by the Jember Religious Court, while Fahmi and colleagues investigated a petition based on the wife's alleged inability to fulfill her husband's sexual needs.[15] Unlike the previous studies, this article examines Batang Religious Court Decision No. 239/Pdt.G/2026/PA.Btg, in which the Panel of Judges granted a petition for permission to practice polygamy despite the apparent absence

[10]Abdul Rahim, "Jurnal Minimum Marriage Age in the Compilation of Islamic Law : A Progressive Ijtihad Based on Maslahah Fardiyyah and A ' Iliyyah," *Jurnal Hukum Islam* 23, no. 2 (2025): 283–84.

[11] Aulia Rachman Alfitri, Rijal Imanullah, "Unregistered Polygamy Validation: Isbat Nikah, Polygamy Permit, And Due Process Of Law In Indonesian Religious Courts," *Ulumuna Journal of Islamic Studies* 28, no. 1 (2024): 313–44, https://doi.org/http://dx.doi.org/10.20414/ujis.v28i1.639.

[12] Abdul Hamid, "Abdullah Saeed ' s Progressive Ijtihad in the Application of Rechtsvinding Judges in Religious Courts," *Indonesian Journal of Islamic Law* 5, no. 2 (2022): 1–17, https://doi.org/https://doi.org/10.35719/ijil.v5i2.824.

[13] Muhammad Solikhudin, "Legal Certainty, Justice, and Maqasid Al-Shari'ah in Polygamy Permits: A Case Study of Kediri Religious Court," *Indonesian Journal of Islamic Law* 7, no. 2 (2024): 1–29, https://doi.org/https://doi.org/10.35719/1xcbasch7.

[14] Faruq Nurul Makarimi and Muhammad Nuruddien, "Pertimbangan Hakim Terhadap Permohonan Izin Poligami Karena Istri Menopause Perspektif Maslahah Al-Syathibi (Studi Putusan Nomor 4877 / Pdt . g / 2021 / Pa . Kab . Mlg)," *Sakina: Journal Of Family Studies* 7, no. 1 (2023): 31–39, https://doi.org/http://urj.uin-malang.ac.id/index.php/jfs.

[15] Martoyo Wahdan Arrizal Luthfi, Ishaq, "Keadilan Berpoligami (Analisis Putusan Pa Jember No 3481/Pdt.G/2021/Pa.Jr)," *Jurnal Qadauna* 18, no. 3481 (2024): 1820–35, https://doi.org/10.35931/aq.v18i3.3488.

of the alternative grounds stipulated in Article 4(2) of the Marriage Law. The distinctive feature of this case lies in the Panel of Judges' reasoning, which considered the first wife's consent, the existence of an unregistered religious marriage (*nikah siri*), the protection of children, and the petitioner's financial capacity. This article analyzes the structure of this reasoning through the perspective of Jamaluddin 'Athiyah's *maqāṣid al-usrah*, specifically to assess the relationship between the protection of offspring, the management of family relationships, and justice for all family members.

An example of judicial ijtihad in a polygamy case is provided by Batang Religious Court Decision No. 239/Pdt.G/2026/PA.Btg, in which AHA bin M acted as the Petitioner and ZT binti R as the Respondent. The case records indicate that the Petitioner and the Respondent married in 2013 and have three children. The Respondent was neither physically disabled nor suffering from an incurable illness. Article 4(2) of Law No. 1 of 1974 concerning Marriage stipulates that a court may grant permission for polygamy if one of the following alternative grounds is established: (a) the wife is unable to perform her marital obligations; (b) the wife has a physical disability or an incurable illness; or (c) the wife is unable to bear children. In its legal reasoning, the Panel of Judges explained that although the Petitioner did not meet the requirements regarding the grounds for polygamy, the trial evidence revealed that the Petitioner's prospective second wife was pregnant with the Petitioner's child from a religious marriage (siri), a fact corroborated by the Respondent's admission before the Court.

Based on these issues, this study aims to analyze the legal reasoning of the Panel of Judges in the Batang Religious Court Decision No. 239/Pdt.G/2026/PA.Btg, particularly when the alternative grounds for granting permission for polygamy under Article 4(2) of the Marriage Law are not met. Furthermore, this study evaluates the judges' reasoning through Jamaluddin 'Athiyah's framework of *maqāṣid al-usrah*, focusing on the protection of offspring, the regulation of family relationships, financial management, and the equitable protection of all family members' rights. Through this analysis, this study seeks to explain the extent to which the orientation toward the welfare of the family can be used to understand the judges' reasoning without disregarding the boundaries of positive law.

B. METHOD

This study employs a qualitative case-study design to examine Batang Religious Court Decision No. 239/Pdt.G/2026/PA.Btg. It adopts a juridical-analytical approach to analyze the statutory provisions governing polygamy authorization, the structure of the judges' reasoning, and the relationship between the application of positive law and the pursuit of family welfare. Jamaluddin 'Athiyah's framework of *maqāṣid al-usrah* was used to evaluate the legal reasoning presented in the decision. The study used primary and secondary data. Primary data were obtained from the text of Decision No. 239/Pdt.G/2026/PA.Btg and in-depth interviews with the judges involved in the case.[16] Secondary data included legislation, literature on Islamic family law, books, and journal articles relevant to polygamy, legal discovery, child protection, and *maqāṣid al-usrah*.

Data were collected through document analysis and semi-structured interviews. The interviews aimed to clarify the judges' reasoning and the relationship between the polygamy authorization decision and subsequent proceedings concerning the determination of the child's parentage.[17] The data were analyzed in three stages: identification of legal facts in the rulings; analysis of the judges' reasoning based on marriage law provisions; and evaluation of that reasoning through the lens of *maqāṣid al-usrah*. Interview findings were compared with court rulings and legal materials to verify the consistency of the information. The interview accounts were confirmed with the informants to enhance the accuracy of the data.

C. RESULTS AND DISCUSSION

An Overview of Polygamy Legislation in Indonesia

Under Islamic law, marriage aims to establish a family life characterized by tranquility, affection and mutual responsibility. This principle is reflected in Qur'an 30:21 (Surah al-Rūm), which highlights *sakinah*, *mawaddah*, and *raḥmah* as

[16] Natalie Osborne and Deanna Grant-smith, "In-Depth Interviewing," *Springer Nature Singapore*, 2021, 105–25, https://doi.org/10.1007/978-981-16-1677-8_7.

[17] Daniel Arthur Jones, "A Review and Critical Analysis of Qualitative Methodologies and Data-Collection Techniques Used for Code-Switching Research," *American Journal of Qualitative Research* 7, no. 2 (2023): 53–72, https://doi.org/10.29333/ajqr/12988.

essential values in marital life. In the context of polygamy, these values must be considered alongside the principles of justice and the protection of the rights of all family members.[18] The primary purpose of marriage is to establish a family characterized by *sakinah*, *mawaddah*, and *raḥmah*, in accordance with human nature.[19] Another purpose of marriage is to preserve human dignity and ensure that human nature or behavior does not deviate from what is prescribed by Islamic law.[20]

Indonesian marriage law establishes monogamy as the general principle, as stipulated in Article 3(1) of Law No. 1 of 1974 concerning Marriage.[21] Nevertheless, Article 3, paragraph (2) allows courts to grant permission for a husband to have more than one wife if desired by the parties involved.[22] This provision indicates that polygamy is legally permissible, but its practice is subject to court oversight and must meet the requirements specified by law.[23]

Etymologically, the term *polygamy* derives from the Greek elements *poly-* (many) and *gamos* (marriage), referring to a marital arrangement involving more than one spouse.[24] In Islamic legal terminology, polygamy is commonly referred to as *taʿaddud al-zawjāt*. The term *taʿaddud* means multiplicity or plurality, while *al-*

[18] Ismail Siti Zubaidah and Awang Mat Muhamad Zahiri, "The Concepts of Sakinah, Mawaddah and Rahmah as Foundation for Marital Happiness According to the Holy Qurʾan: An Analysis Based on Ayat 21, Surah Al-Rum," Al-BayĀn – Journal of QurʾĀn and ḤadĪth Studies 14, no. 2 (2016): 206–22, https://doi.org/10.1163/22321969-12340039.

[19] Taufiqurohman and M. Ulul Albab Musaffa, "Decoding Polygamy Permits: Unraveling Sociological and Legal Anthropological Perspectives on Marriage Motives and Conditions," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 8, no. 2 (2023): 163–75, https://doi.org/10.22515/alahkam.v8i2.8504.

[20] Sukataman et al., "Maqāṣid Al-Sharīʿah and the Prohibition of Incest in Indonesian Legislation: An Analysis of the Protection of Lineage and Public Morals," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 2 (2025): 205–26, https://doi.org/10.24090/mnh.v19i2.14989.

[21]Theresia Dyah Wirastri and Stijn Cornelis van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32, https://doi.org/10.15408/ajis.v24i2.38424.

[22] Fiska Silvia Raden Aziz, Norazlina Abdul Abdullah, Rozlinda Roro and Mohd Norhusairi Mat Hussin, "Harm 'Ḍarar' in Polygamous Marriage: Analyzing The Legal Framework in Malaysia and Indonesia," *Ahkam: Jurnal Ilmu Syariah* 25, no. 1 (2025): 53–70, https://doi.org/10.15408/ajis.v25i1.32068.

[23] Sam`un, "Asas Monogami Terbuka Dalam Perundang-Undangan Perkawinan Islam Di Indonesia," *Al-Hukama The Indonesian Journal of Islamic Family Law* 05, no. 01 (2015): 11.

[24] Ahmad Syaikal and Ainul Yakin, "The Dynamics of Polygamy in Middle-Class Society (An Analysis of the Perspective of Islamic Law, Family Welfare and Gender Equality)," *International Journal of Science and Environment (IJSE)* 5, no. 3 (2025): 269–76, https://doi.org/10.51601/ijse.v5i3.184

zawjāt is the plural form of *zawjah*, meaning "wife."[25] Therefore, in this journal, polygamy is defined as a marital bond between a man and more than one wife. The permissibility of polygamy in Islamic law is commonly discussed with reference to Qur'an 4:3 (Surah al-Nisā'), which states: "And if you fear that you will not deal justly with orphan girls, then marry those that please you of [other] women, two or three or four.[26] But if you fear that you will not be just, then [marry only] one or those your right hands possess. That is more suitable that you may not incline [to injustice]."[27] Therefore, it can be concluded that Islamic law permits polygamy on the condition that the husband must be able to treat his wives fairly.

The principle of justice in Qur'an 4:3 has been interpreted differently by Imam al-Shāfiʿī and other Islamic scholars. According to Imam al-Shāfiʿī, justice in polygamy primarily concerns matters within a husband's control, including the equitable allocation of time and financial support. By contrast, equality in emotional attachment is difficult to achieve because feelings are not entirely subject to human control.[28] Meanwhile, the discussion of justice in relation to Imam Aḥmad ibn Ḥanbal refers to Qur'an 4:129, which acknowledges the difficulty of achieving complete equality between wives, particularly in matters of emotional inclination. The concept of justice in polygamy is not merely quantitative fairness—such as the distribution of material goods or the rotation of time spent with each wife—but also encompasses qualitative fairness, such as affection, which serves as the primary foundation of married life.[29]

[25] Fauzan Ra'if Muzakki, "Poligami Dalam Pandangan Pakar Kontemporer Indonesia: Analisis Komparatif Pemikiran Dan Pemahaman M. Quraish Shihab Dan Siti Musdah Mulia" (Jakarta : PTIQ University, 2025).

[26] Wely Zulyadain dan Dozan, "The Interpretation Shift of Polygamy Verses in Surah An-Nisā'(4): 3 and Its Contextualization in the Contemporary Era (Interpretation Studies in the Classical, Medieval, Modern-Contemporary Era)," *Jurnal Ushuluddin* 30, no. 2 (2022): 2003–5, https://doi.org/10.24014/Jush.v30i2.

[27] Hina Azam, "Why Polygamy Is Superior to Monogamy: Al-Mahdī Al-Wazzanī's Response to Islamic Modernism," *Journal of Law and Religion* 40, no. 2 (2026): 1–26, https://doi.org/10.1017/jlr.2026.10084.

[28] Daud Ilyas, "The Meaning of Justice in the Qur'an and the Implications of Islamic Law on Polygamy Permits: Harmonization of Islamic Law and Positive Law with the Maqasidi Tafsir Approach," *Al Quds Jurnal Studi Alquran Dan Hadis* 9, no. 1 (2025): 1–16.

[29] Yunan Putra and Lestania, "Konsep Adil Berpoligami Dalam Kitab Bulughul Maram Min Adillatil Ahkam Karya Ibnu Hajar Al Asqalany," *Sangaji Jurnal Pemikiran Syariah Dan Hukum* 7, no. 1 (2023): 58–67.

Other literature discusses the interpretation of justice in polygamy attributed to Imam al-Shāfiʿī and adopted by K.H. Ahmad Masruh IM. According to this interpretation, justice primarily concerns outward and measurable matters, including financial support, housing, and the allocation of time among wives. By contrast, equality in inward matters, such as affection and emotional attachment, cannot be fully controlled by human beings. However, K.H. Muhammad Farid Zaini offers a different interpretation, arguing that justice in polygamy encompasses both outward and inward dimensions, which should both be taken into consideration. However, K.H. Muhammad Farid Zaini offers a different interpretation, arguing that justice in polygamy encompasses both outward and inward dimensions, which should both be taken into consideration. Although, in principle, humans intend to act fairly in the inward sense, in reality, they are incapable of doing so.[30]

In addition to Law No. 1 of 1974 concerning Marriage, the legal framework governing polygamy for Indonesian Muslims is also regulated by the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI). The rules on polygamy in the KHI are set forth in Chapter IX on having more than one wife, specifically in Articles 55, 56, 57, 58, and 59. Some of these provisions are as follows:

Article 55

1) A husband may have more than one wife at the same time, provided that the total number does not exceed four.
2) The principal requirement for having more than one wife is the husband's ability to treat his wives and children justly.
3) If the requirement referred to in paragraph (2) cannot be fulfilled, the husband is prohibited from having more than one wife.

Article 56

1) A husband who wishes to have more than one wife must obtain permission from the Religious Court.

[30] Ferlina Dimyati, Yayat and Revian Astuti, "Prinsip Keadilan Dalam Poligami (Studi Kasus KH. Ahmad Masruh IM, M.H Dan KH. Muhammad Farid Zaini Lc.)," *At-Tahdzib: Jurnal Studi Islam Dan Mu'amalah* 11, no. 01 (2023): 89–94.

2) The submission of the application for permission referred to in paragraph (1) shall be carried out in accordance with the procedures set forth in Chapter VIII of Government Regulation No. 9 of 1975.
3) A marriage to a second, third, or fourth wife without permission from the Religious Court has no legal force.

The strict regulation of polygamy in Indonesia is reflected in the procedural requirements established by the government to regulate and limit the practice of polygamy. A polygamous marriage conducted without the required court authorization does not comply with the statutory procedure and may consequently lack the legal recognition and protection afforded to marriages registered in accordance with applicable law. [31]

Facts of the Case and Evidence in Decision No. 239/Pdt.G/2026/PA.Btg

This study examines the petition for permission to practice polygamy registered as Case No. 239/Pdt.G/2026/PA.Btg at the Batang Religious Court, with AHA bin M as the Petitioner and ZT binti R as the Respondent. The Petitioner and the Respondent married in 2013 and have three children. During their marriage, they acquired jointly owned assets, including land, buildings, and several vehicles. The Petitioner sought permission to practice polygamy on the grounds of his high sexual desire and his intention to marry a woman who had previously worked as a domestic helper in the household. The Petitioner also stated that his prospective second wife is currently pregnant and that the relationship has been approved by the Respondent.

During the hearing, the Respondent confirmed that she was aware of and had consented to the proposed marriage. The Respondent further explained that, while she was pregnant and approaching childbirth, she was unable to meet the Petitioner's sexual needs to the same extent as before. Witness testimony further indicated that the Petitioner and his prospective second wife had entered into an

[31] Amru Harahap Khoirul, "Kebijakan Pemerintah Republik Indonesia Dan Hukum Islam Mengenai Poligami: Sebuah Kajian Perbandingan," *Volksgeist* 02, no. 01 (2019): 94–103, https://doi.org/10.24090/volksgeist.v2i1.2684.

unregistered religious marriage (*nikah siri*) with the Respondent's knowledge and consent, and that a child had been born from the marriage.

These facts must be distinguished from the alternative statutory grounds stipulated in Article 4(2) of the Marriage Law. The Respondent's pregnancy and proximity to childbirth do not, in themselves, establish that she was unable to perform her marital obligations within the meaning of Article 4(2). Therefore, the central issue in this case is not merely the Respondent's consent or the existence of a child from the unregistered marriage, but also how the Panel of Judges establishes the legal basis for granting the petition when the alternative grounds for granting permission for polygamy are not met.

During the trial, the Petitioner called four witnesses. The first and second witnesses essentially corroborated the arguments presented in the Petitioner's application for permission to practice polygamy. The third witness further testified that the Petitioner had entered into an unregistered religious marriage after obtaining the Respondent's consent and that a child from the marriage had already been born. The fourth witness provided similar testimony, confirming that the Petitioner had entered into an unregistered religious marriage with the Respondent's prior consent and that a child had been born from the marriage. The witness also stated that there had been no allegations of prior infidelity. The Panel of Judges subsequently conducted a closed session in which the Respondent was questioned separately. During this session, she stated that she was willing to consent to the Petitioner's marriage to the woman who had previously worked as their domestic helper.

The Respondent confirmed that the Petitioner had sought her consent before entering into the unregistered religious marriage. At that time, she was pregnant and approaching childbirth, which limited her ability to meet the Petitioner's sexual needs. The Respondent stated that the Petitioner's unregistered marriage to his prospective second wife had not resulted from an extramarital affair. The Respondent further explained that she was concerned that the Petitioner might engage in conduct prohibited by religious law, particularly adultery, because of his strong sexual desire. She also stated that the Petitioner's father had practiced polygamy and had eight wives.

Judicial Progressive Ijtihad in Decision No. 239/Pdt.G/2026/PA.Btg: An Analysis through Jamaluddin 'Athiyah's Framework of *Maqāṣid al-Usrah*

Jamaluddin ‘Athiyah developed the concept of *maqāṣid al-usrah* as an extension of the study of *maqāṣid al-syarī‘ah* within the realm of the family. This concept views the family as an institution with distinct objectives and collective interests. Accordingly, the analysis of family law issues should not be confined to individual interests but should also consider the relationships and rights of all family members. Within this framework, the objectives of sharia encompass four spheres: the individual, the family, society, and humanity.[32]

Within the family domain, Jamaluddin 'Athiyah identifies seven principal objectives: regulating relationships between men and women; protecting offspring (*ḥifẓ al-nasl*); preserving lineage and kinship ties (*ḥifẓ al-nasab*); establishing family life based on *sakinah*, *mawaddah*, and *raḥmah*; preserving the family's religious commitment (*ḥifẓ al-tadayyun*); regulating family institutions; and managing family finances.[33]

In this study, the seven dimensions are not applied mechanically as a checklist. Instead, they serve as an evaluative framework for identifying the family objectives relevant to the case. The analysis focuses on the protection of lineage and descent, the management of relationships with the opposite sex, family harmony, and financial management. Other dimensions are still considered to the extent that they have a direct relationship with the facts and legal considerations in the ruling.

The statutory requirements for obtaining permission to practice polygamy should be distinguished into two categories. First, the alternative grounds stipulated in Article 4(2), namely, the wife's inability to perform her marital obligations, her physical disability or incurable illness, or her inability to bear children. Second, the cumulative requirements stipulated in Article 5(1), which include the wife's

[32] Sri Wardi, Cholid Nurhayati, “Contextualisation of Al-Maqasid Al-Kulliyat According to The Objectives of *The* Individual, Family, Society and Humanity: An Analysis on Jamaluddin ‘Athiyah’s Perspectives,” *Malaysian Journal of Syariah and Law* 11, no. 1 (2023): 109–21, https://doi.org/doi.org/10.33102/mjsl.vol11no1.389.

[33] Prayudi Rahmatullah Cholil, Mufidah, Abd Rouf, “Domestic Violence a Nd Women ’ s Legal Awareness : The Family Corner Programmes Interventions through the Perspective of Maqāṣid Al-Usrah,” *De Jure: Jurnal Hukum Dan Syar’iah* 17, no. 2 (2025): 649–74, https://doi.org/dx.doi.org/10.18860/j-fsh.v17i2.30101.

consent, assurance of the husband's financial ability to support the wife and children, and a guarantee that he will treat them justly. These two categories of requirements serve distinct legal functions. Therefore, compliance with Article 5 does not, in itself, replace the requirement to establish at least one of the alternative grounds under Article 4(2). For Muslims, these provisions are also related to the regulation of polygamy in the Compilation of Islamic Law (KHI), specifically Articles 55–59. The KHI establishes a maximum limit of four wives, the obligation to obtain permission from the Religious Court, and the requirements of fairness and the wife's consent. These provisions demonstrate that the permissibility of polygamy under Indonesian Islamic law is situated within a framework of legal protection and oversight.

The Panel of Judges examining Decision No. 239/Pdt.G/2026/PA.Btg applied the principles of *ḥifẓ al-nasl* (protection of offspring) and *ḥifẓ al-nasab* (preservation of lineage). In an interview conducted on Monday, June 22, 2026, from 1:30 p.m. to 2:30 p.m. Western Indonesian Time (WIB), in the Judges' Chamber of the Batang Religious Court, Yudi Hardeos, S.H.I., M.S.I., the presiding judge in the case, stated:

> "If the Petitioner's application for permission to practice polygamy were rejected, I believe that this could create greater harm or conflict concerning the protection of the rights of the child born from his unregistered marriage to his prospective second wife. The Petitioner has also expressed his commitment to act justly and to continue fulfilling his responsibilities toward the children from his marriage to the Respondent."

This statement reflects the Panel of Judges' consideration of the potential social consequences of denying the petition for permission to practice polygamy. However, an assessment of the public interest should not rest solely on the possibility of conflict or uncertainty concerning the protection of children from the second marriage. This consideration must also be evaluated by taking into account the consequences of granting permission for the first wife and the children from the first marriage. Accordingly, the protection of children from the second marriage must be assessed within a broader framework that balances the rights of all family members, ensuring that the public interest is not interpreted in a manner that favors only one party.

From the perspective of Jamaluddin 'Athiyah's *maqāṣid al-usrah*, the existence of a child born from an unregistered religious marriage can be examined through

two interrelated dimensions: the protection of offspring (*ḥifẓ al-nasl*) and the preservation of lineage (*ḥifẓ al-nasab*). *Ḥifẓ al-nasl* concerns the protection of offspring, including the fulfillment of children's rights to care, protection, and an adequate standard of living. Meanwhile, *ḥifẓ al-nasab* concerns the preservation and clarity of lineage and the legal consequences associated with it. Thus, the protection of a child's well-being is not necessarily synonymous with the establishment of lineage or the child's civil relationship with the biological father. These two dimensions must be distinguished so that the analysis of the family's best interests does not exceed the legal consequences of the ruling under review.

In contemporary family law, the protection of offspring involves not only the child's biological existence but also the fulfillment of the child's rights after birth. Children must receive care, support, protection, and certainty regarding their legal relationship with their parents. Therefore, the existence of children from unregistered marriages raises issues that require careful analysis, particularly when it comes to fulfilling children's rights and establishing proof of their civil relationship with their biological father. Within the framework of *ḥifẓ al-nasl*, children's interests should not be disregarded solely because of administrative or legal problems concerning their parents' marital relationship.[34] Mr. Yudi Hardeos, S.H.I., M.S.I., expressed the opinion that:

> "From the perspective of classical fiqh, polygamy is permissible as long as no legal prohibition applies and the husband has the ability to fulfill his obligations and ensure the welfare of the family. Furthermore, the Panel of Judges has the discretion to exercise ijtihad, including through a *contra legem* interpretation of Article 4(2) of the Marriage Law, when considerations of family welfare are deemed relevant to the application of the statutory provisions."

From the perspective of Jamaluddin 'Athiyah's *maqāṣid al-usrah*, Yudi Hardeos's statement suggests that the application of Article 4(2) of the Marriage Law was considered in relation to the objective of regulating relationships between men and women in accordance with legal provisions, rights, and obligations, thereby protecting human dignity and preventing potential harm.

[34] Eric Prianto at all Rocky, "Implementasi Prinsip Maqashid Syariah Dalam Sistem Hukum Keluarga Islam Kontemporer: Analisis Terhadap Perkembangan Fiqh Munakahat Di Era Modern," *Jurnal Hukum Al Adl Harapan* 4 (2025): 9–14.

Constitutional Court Decision No. 46/PUU-VIII/2010 provides an important legal basis for protecting the civil rights of children born outside a legally registered marriage. The Constitutional Court held that Article 43(1) of the Marriage Law is unconstitutional to the extent that it is interpreted to deny a civil relationship between a child and a man who can be proven, through scientific and technological evidence and/or other legally admissible evidence, to be the child's biological father. This decision strengthens the legal protection of a child's civil relationship with a biological father whose paternity can be established through legally admissible evidence. However, the civil relationship is not established automatically without the required proof. Furthermore, the civil relationship as referred to in the Constitutional Court's decision must be distinguished from the determination of lineage under Islamic law. Thus, this Constitutional Court decision is relevant as a basis for the protection of children's rights, but it cannot be interpreted as a provision that automatically validates a "siri" marriage or establishes all the legal consequences of a child's lineage.[35] If the Panel of Judges had rejected the petition solely because the statutory requirements had not been fulfilled, despite the existence of an established family relationship, such a decision could have contributed to legal uncertainty concerning the status of the second wife and the protection of the children's constitutional rights.[36] Mr. Yudi Hardeos, S.H.I., M.S.I., expressed the opinion that:

> "My two associate judges and I also considered the public interest regarding the rights of the second wife and the child born from the petitioner's second marriage, ensuring their legal protection. This ruling does indeed shift the focus from normative legalism or procedural justice—where the Petitioner should not have received permission from the Batang Religious Court as stipulated in Article 4(2) of the Marriage Law—toward substantive justice."

Yudi Hardeos's statement is consistent with the dimension of family financial management in Jamaluddin 'Athiyah's *maqāṣid al-usrah*, which encompasses matters such as dowry, child maintenance, spousal maintenance, support for

[35] Benny Yohanes, Joshua Djaja, "Antinomy of Biological Father's Liability to Out-of- Marriage Children in Notary Deed," *Jurnal Konstitusi* 21, no. 1 (2024): 136–52, https://doi.org/doi.org/10.31078/jk2118.

[36] Hoko Horii and Theresia Dyah Wirastri, "Living in a Legal Limbo: Mechanisms to 'Fix' The Legal and Social Positions of Unregistered Children in Indonesia," *Indonesian Journal of Socio-Legal Studies* 2, no. 1 (2022), https://doi.org/10.54828/ijsls.2022v2n1.1.

nursing mothers, inheritance, wills, and family endowments (*waqf*). Progressive judicial ijtihad should not necessarily be regarded as a departure from codified legal provisions. Rather, it may reflect the capacity of Islamic legal reasoning to respond to contemporary challenges, including gender inequality, limited access to education, and economic hardship.[37] Accordingly, the granting of permission for polygamy was viewed by the Panel of Judges as a means of addressing concerns about the child's welfare and legal protection. However, such considerations must be assessed alongside the statutory requirements governing polygamy. At the end of the interview, Yudi Hardeos, S.H.I., M.S.I., further explained the financial protection considered in relation to the Petitioner's first and prospective second marriages:

> "My two associate judges and I consistently referred to Book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts, issued by the Supreme Court of the Republic of Indonesia, in examining this case. In polygamy cases, the petitioner is required to identify or seek a determination of the joint assets acquired during the marriage with the existing wife. The Panel of Judges examined the joint assets of the Petitioner and the Respondent. This examination serves as a preventive measure by distinguishing the joint assets of the first wife from assets that may be acquired in subsequent marriages, thereby reducing the risk of future property disputes. Furthermore, the liquid funds held in the Petitioner's name and the active cash flow as of January 2026 were considered evidence of his financial capacity to provide material support for the Respondent, their three children, the prospective second wife, and her child."

This explanation is relevant to the dimension of family financial management within Jamaluddin 'Athiyah's framework of *maqāṣid al-usrah*. The examination of jointly owned assets and the Petitioner's financial capacity indicates an effort to prevent potential ownership disputes and assess his ability to meet the family's financial needs. Nevertheless, financial capacity alone does not establish that the principle of justice in polygamy has been fulfilled. Such an assessment must also consider the equitable distribution of financial support, the fulfillment of the rights of both wives and all children, and the protection of each party's property interests. Thus, economic considerations in this case can be viewed as one instrument of

[37] Dhiauddin Arrasyid, Fauzan Tanjung, "Islamic Family Law Reform in Indonesia Through Supreme Court Circulars: A Maqasid Sharia Perspective," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 2 (2023): 208–25, https://doi.org/doi.org/10.30659/jua.v6i2.29236.

family protection, but they are insufficient to conclude that all the objectives of a harmonious family life have been met.

A decision granting permission to practice polygamy may be relevant to subsequent legal proceedings concerning the legal protection of the second wife and the children born from that marriage. However, the legal effects of a polygamy authorization decision must be distinguished from those of a judicial determination of a child's parentage. A decision granting permission for polygamy authorizes the husband to enter into a polygamous marriage, whereas the determination of a child's legal relationship with his or her biological father requires separate judicial examination and evidence. Therefore, a polygamy authorization decision may serve as supporting documentary evidence in proceedings concerning a child's parentage, but it does not automatically establish the child's biological lineage or civil relationship with the alleged father.[38] In this context, *maqāṣid al-usrah* provides an evaluative framework for determining whether the judges' considerations adequately address the interests of all family members. Child protection, the fulfillment of the wife's rights, family financial management, and the maintenance of relationships among family members must be considered holistically. Accordingly, the public-interest orientation of the decision should not be assessed solely in terms of whether it resolves the difficulties faced by the Petitioner and his prospective second wife. It should also be evaluated in terms of the proportional protection afforded to the first wife and the children from the first marriage.[39]

Based on this discussion, the *maqāṣid al-usrah* perspective helps explain the public interest orientation used by the Panel of Judges in considering this case, particularly regarding child protection, the fulfillment of family members' rights, and the management of family finances. Nevertheless, the application of public interest considerations must be situated within the framework of applicable positive law. Considerations of family welfare do not, in themselves, override the

[38] Candra Boy Lubis, Rusdi Rizki Asmuni, Asmuni Mukharrom, Tamyiz Seroza and Aisyah Kahar, "Towards Legal Justice : Expanding Criteria for Obligatory Bequests in Unregistered Wives in Polygamous Marriages," *Jurnal Al-Ahkam* 35, no. 1 (2025): 117–46, https://doi.org/10.21580/ahkam.2025.35.1.25358.

[39] Widitya Galuh Qomaro, "Integrating Maqasid Al-Usrah by Jamal Al- Din 'Atiyah Muhammad Into Family Resilience Measurement in Indonesi," *Malaysian Journal of Syariah and Law* 14, no. 1 (2026): 246–59, https://doi.org/https://doi.org/10.33102/mjsl.vol14no1.1097.

statutory requirements stipulated in Article 4(2) of the Marriage Law. Therefore, this ruling is more accurately understood as a case illustrating the tension between the application of normative requirements and consideration of the social consequences of a ruling. The strength of the judges' ijtihad must therefore be assessed in terms of the clarity of its legal basis and the relevance of the facts established during the proceedings.

After obtaining the polygamy authorization, the Petitioner and his second wife registered their marriage at the Batang Regency Office of Religious Affairs in May 2026. Subsequently, the Petitioner and his second wife filed a petition for the judicial determination of the child's parentage in Case No. 99/Pdt.P/2026/PA.Btg before the Batang Religious Court. The petition concerned a child born to the Petitioner and his second wife, who is identified in the case records by the initials AFAF. The filing of this petition demonstrates that the protection of the child's legal status requires a separate judicial examination, independent of the existing polygamy authorization decision. In an interview conducted on Wednesday, July 1, 2026, from 1:30 p.m. to 2:30 p.m. WIB in the Judges' Chamber of the Batang Religious Court, Muhammad Ubayyu Rikza, S.H.I., stated:

> "Cases regarding the determination of a child's parentage aim to provide guarantees of protection and legal certainty for the child, in accordance with the provisions of the Child Protection Law, which stipulates that child protection encompasses all activities designed to ensure and protect children and their rights so that they may live, grow, and develop, and also participate to the fullest extent possible in accordance with human dignity, as well as to receive protection from violence and discrimination."

An interview with Muhammad Ubayyu Rikza, S.H.I., revealed that a petition to determine a child's parentage is viewed as an effort to secure legal certainty and protection for the child. This perspective is consistent with the child-protection principle established under Law No. 23 of 2002 concerning Child Protection, as amended by Law No. 17 of 2016. This law establishes child protection as an effort to guarantee and safeguard children's rights so they may live, grow, develop, and participate to the fullest extent possible, as well as receive protection from violence and discrimination. Thus, cases regarding a child's parentage are not merely about establishing the father's identity, but also about ensuring legal certainty and the fulfillment of children's rights under the law.

According to the case records in Case No. 99/Pdt.P/2026/PA.Btg, a copy of Decision No. 239/Pdt.G/2026/PA.Btg was submitted as documentary evidence marked P.9 to demonstrate that the Petitioner had obtained authorization to practice polygamy from the Batang Religious Court. The submission of this document demonstrates the procedural connection between the polygamy authorization proceedings and the subsequent case concerning the child's parentage. Nevertheless, the function of the polygamy authorization decision as evidence in the child's parentage case cannot be equated with the legal determination of the relationship between the child and his biological father. Such a determination remains dependent on the examination and evaluation of the evidence by the Panel of Judges in the child's parentage case. Therefore, this fact is more accurately understood as a form of procedural interconnection between rulings that has the potential to support the legal protection of the child, rather than as evidence that the child's lineage status has been established by the polygamy authorization ruling.

Overall, Decision No. 239/Pdt.G/2026/PA.Btg reflects the Panel of Judges' consideration of social consequences and family interests in adjudicating the petition for permission to practice polygamy. Jamaluddin 'Athiyah's perspective *on maqāṣid al-usrah* helps identify the dimensions of public interest that the judges considered, particularly the protection of offspring, the maintenance of family relationships, and the management of family finances. However, these considerations still need to be evaluated in light of compliance with the legal requirements for polygamy and the balance of protection for the rights of all family members. The use of a polygamy authorization decision as documentary evidence in subsequent parentage proceedings also demonstrates a procedural connection between the two judicial processes. Nevertheless, the child's legal status remains subject to separate judicial examination and proof. Thus, this study contributes to the analysis of the relationship between family-welfare considerations, judicial legal reasoning, and the limits of the legal effects of polygamy authorization decisions.

D. CONCLUSION

This study shows that Batang Religious Court Decision No. 239/Pdt.G/2026/PA.Btg reflects the Panel of Judges' consideration of social realities and the potential legal consequences of granting permission to practice polygamy. These considerations include the first wife's consent, the existence of a child from an unregistered marriage, the Petitioner's financial capacity, and the protection of family members' rights. From the perspective of Jamaluddin 'Athiyah's *maqāṣid al-usrah*, these considerations relate to the objectives of protecting offspring (*ḥifẓ al-nasl*), preserving lineage (*ḥifẓ al-nasab*), regulating family relationships, and managing family finances. Nevertheless, considerations of the public interest do not, in themselves, supersede the alternative statutory grounds stipulated in Article 4(2) of the Marriage Law. Furthermore, permission for polygamy does not automatically establish the child's lineage or civil relationship with his biological father, as such determination requires a separate examination and proof. Thus, the decision highlights the importance of public-interest considerations in judicial reasoning. However, the exercise of judicial discretion, including any *contra legem* approach, must be supported by a clear legal basis and must account for the equitable protection of all family members' rights.

This study is limited to one court decision and interviews with two judges of the Batang Religious Court. Therefore, its findings should not be generalized to judicial practice across all Religious Courts. Future research could compare multiple decisions granting permission for polygamy and incorporate the perspectives of affected family members to provide a more comprehensive understanding of how the public-interest principle is applied in family law. In practical terms, judges' capacity to integrate the considerations of *maqāṣid al-usrah* with applicable positive law should be strengthened. This requires clear legal reasoning grounded in the evidence presented during proceedings and attentive to the rights of all family members.

E. AI USAGE STATEMENT

During the preparation of this manuscript, the authors used Grammarly AI to assist with language editing, grammar refinement, translation, and improving the

overall readability of the manuscript. The use of these tool did not influence the research methodology, substantive analysis, interpretation of findings, or scholarly conclusions. After using this tool, the authors thoroughly reviewed, verified, and edited the content as needed, and take full responsibility for the accuracy, originality, and integrity of the publication.

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