

UNREGISTERED POLYGAMY (POLIGAMI SIRI) IN THE PERSPECTIVE OF MAQASID AL-SHARI'AH AND THE PROTECTION OF WOMEN'S AND CHILDREN'S RIGHTS IN INDONESIA

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ABSTRACT

The practice of unregistered polygamous marriage (*poligami siri*) in Indonesia reflects a persistent tension between religious legitimacy and state legal recognition, resulting in significant implications for the protection of women's and children's rights. This study aims to analyze the practice of *poligami siri* within the Indonesian legal context, evaluate its compatibility with *maqasid al-syari'ah*, and examine its implications for legal protection. This research employs a normative juridical method, utilizing statutory, conceptual (*maqasid al-syari'ah*), and case approaches, supported by primary and secondary legal materials. The findings reveal that although *poligami siri* may fulfill formal requirements of classical Islamic jurisprudence, it often contradicts the substantive objectives of *maqasid*, particularly in the protection of lineage, property, life, and dignity. The practice leads to legal uncertainty, limited access to justice, economic vulnerability, and structural discrimination against women and children. This study concludes that the permissibility of polygamy must be reinterpreted based on public welfare (*maslahah*), emphasizing substantive justice and the necessity of marriage registration as part of *maqasid* fulfillment. Strengthening the integration between Islamic legal values and state law is essential to ensure comprehensive legal protection. The main contribution of this article lies in offering a *maqasid*-based reconstruction of polygamy by shifting the analysis from formal legal validity toward substantive justice and public welfare (*maslahah*).

Keywords : *Poligami Siri; Maqasid al-shari'ah; Marriage Registration; Women's Rights; Children's Rights.*

ABSTRAK

Poligami siri di Indonesia mencerminkan adanya ketegangan antara legitimasi agama dan pengakuan hukum negara yang berdampak pada lemahnya perlindungan hak perempuan dan anak. Penelitian ini bertujuan untuk menganalisis praktik poligami siri dalam hukum Indonesia, mengkaji kesesuaiannya dengan *maqasid al-syari'ah*, serta mengidentifikasi implikasinya terhadap perlindungan hukum. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual (*maqasid al-syari'ah*), dan kasus, serta didukung oleh bahan hukum primer dan sekunder. Hasil penelitian menunjukkan bahwa meskipun poligami siri memenuhi syarat formal fikih klasik, praktiknya sering bertentangan dengan tujuan *maqasid*, khususnya dalam perlindungan keturunan, harta, jiwa, dan kehormatan. Praktik ini menimbulkan ketidakpastian hukum, kesulitan akses keadilan, kerentanan ekonomi, dan diskriminasi struktural terhadap perempuan dan anak. Penelitian ini menyimpulkan bahwa kebolehan poligami perlu direinterpretasi berbasis kemaslahatan dengan menekankan keadilan substantif serta pentingnya pencatatan nikah sebagai bagian dari *maqasid*. Integrasi antara nilai syariah dan hukum negara menjadi kunci dalam mewujudkan perlindungan hukum yang komprehensif. Kontribusi utama artikel ini adalah menawarkan rekonstruksi poligami berbasis *maqasid* dengan menggeser analisis dari legalitas formal menuju keadilan substantif dan kemaslahatan.

Kata Kunci: *Poligami Siri; Maqasid al-shari'ah; Marriage Registration; Women's Rights; Children's Rights.*

INTRODUCTION

The phenomenon of *unregistered polygamous marriage* (poligami siri) in Indonesia represents a persistent tension between religious legitimacy and state legality. In Islamic jurisprudence, polygamy is conditionally permitted under strict requirements of justice; however, in the Indonesian legal system, it is tightly regulated and requires formal registration and court permission (bin Simun, 2024). This dualism has created a socio-legal gap in which polygamous unions may be considered religiously valid yet remain legally unrecognized by the state, thereby producing significant implications for legal protection and rights enforcement (Cammack et al., 2012).

From a juridical perspective, the urgency of examining *poligami siri* becomes stronger when viewed through Indonesia's positive legal framework. The House of Representatives of the Republic of Indonesia Law Number 1 of 1974 on Marriage, as amended by The House of Representatives of the Republic of Indonesia, explicitly requires marriage registration and imposes strict procedural requirements for polygamy, including court authorization and proof of the husband's capacity to ensure fairness and financial responsibility. Likewise, Supreme Court of the Republic of Indonesia Religious Courts function as the primary legal gatekeepers in assessing whether substantive justice can be achieved in polygamous marriages. In practice, *poligami siri* circumvents these legal mechanisms, thereby weakening state supervision and limiting access to legal remedies for women and children (Pamula, 2023).

Empirical studies indicate that unregistered marriages, including polygamy siri, are still widely practiced due to economic constraints, bureaucratic complexity, and religious interpretations that prioritize formal validity over administrative compliance (Fadhilah et al., 2025). This situation reflects a broader structural problem in which legal pluralism allows parallel normative systems—state law and religious law—to operate simultaneously, often leading to contradictions in implementation and protection mechanisms (Bowen, 2003).

The consequences of *poligami siri* are particularly evident in three critical domains. First, the issue of *maintenance rights* (*nafkah*) becomes problematic, as wives in unregistered marriages lack enforceable legal claims in the absence of formal documentation (Nurlaelawati, 2010). Second, the *legal status of children* born from such unions is often ambiguous, especially in relation to civil registration, inheritance rights, and paternal recognition (Lindsey, 2012). Third, the *legal protection of women* is significantly weakened,

exposing them to economic vulnerability, marital instability, and limited access to justice (Robinson, 2009).

The most severe consequences of *poligami siri* are borne by the most vulnerable parties, namely the first wife, the unregistered wife, and children born from unregistered marriages. The first wife often experiences emotional harm, economic insecurity, and loss of marital rights due to the absence of judicial oversight in subsequent marriages (Robinson, 2009). Meanwhile, unregistered wives are placed in a highly precarious legal position, as they frequently lack access to enforceable rights related to maintenance, inheritance, marital property, and legal recognition of the marriage itself (Nurlaelawati, 2010). Children born from such unions face further disadvantages, including difficulties in civil registration, inheritance disputes, and limited access to legal protection regarding paternal responsibility (Lindsey, 2012).

From a normative Islamic perspective, these consequences raise critical questions regarding the alignment of *poligami siri* with the higher objectives of Islamic law (*maqasid al-syari'ah*) (Hakim et al., 2025). The *maqasid* framework emphasizes the protection of essential human interests, including lineage (*hifẓ al-nasl*), property (*hifẓ al-māl*), life (*hifẓ al-nafs*), and dignity (*hifẓ al-'ird*). Contemporary scholars argue that any legal practice that undermines these protections cannot be justified merely on formalistic grounds (Auda, 2008).

Previous studies on polygamy in Indonesia have largely focused on doctrinal legality or sociological dimensions without sufficiently integrating *maqasid* analysis as a critical evaluative framework. For instance, research has explored the regulation of polygamy in Indonesian law and its socio-religious acceptance but has not adequately addressed whether such practices fulfill the substantive objectives of justice and welfare (Blackwood, 2007). Similarly, studies on unregistered marriage tend to emphasize administrative issues rather than examining their deeper implications for human rights and Islamic legal philosophy (Bedner & Van Huis, 2010).

These harms reveal that the central problem of *poligami siri* extends beyond the issue of unregistered marriage itself; rather, it lies in the disappearance of legal control mechanisms designed to ensure justice, accountability, and protection for all parties involved. Without court supervision and state registration, the legal safeguards intended to regulate polygamy become ineffective, thereby enabling practices that may

disproportionately harm women and children while escaping meaningful legal scrutiny (Cammack et al., 2012).

This indicates a clear *gap of knowledge*: the lack of integrative analysis combining *maqasid al-syari'ah* with contemporary legal protection frameworks for women and children in the context of poligami siri. While existing literature acknowledges the problems caused by unregistered marriages, it does not systematically evaluate them through a *maqasid*-based lens that prioritizes substantive justice over formal compliance.

Therefore, this study aims to fill this gap by critically analyzing poligami siri through the perspective of *maqasid al-syari'ah* and examining its implications for the protection of women's and children's rights in Indonesia. The originality of this research lies in its attempt to reconstruct the permissibility of polygamy not merely as a formal legal allowance but as a conditional institution that must align with the higher objectives of Islamic law and modern principles of legal protection.

Accordingly, this study is guided by the following research objectives: (1) to analyze the socio-legal practice of poligami siri in Indonesia; (2) to evaluate its compatibility with *maqasid al-syari'ah*; and (3) to formulate a conceptual framework for strengthening the protection of women's and children's rights within Islamic family law.

The persistence of *poligami siri* in Indonesia reflects a complex intersection of legal pluralism, religious interpretation, and socio-economic realities (Pamula, 2023). At the normative level, Indonesian marriage law requires official registration to ensure legal validity and protection; however, in practice, many individuals continue to engage in unregistered polygamous marriages due to perceived religious sufficiency and administrative barriers (Butt, 2014). This discrepancy generates a fundamental legal ambiguity, where marriages are simultaneously recognized and unrecognized depending on the normative framework applied. Such ambiguity not only weakens the authority of state law but also undermines the effectiveness of legal protection mechanisms designed to safeguard vulnerable groups (Bedner & Van Huis, 2010).

A central problem lies in the absence of enforceable rights for women involved in unregistered polygamous marriages. Without legal recognition, claims related to maintenance, inheritance, and marital protection cannot be effectively pursued through formal legal institutions, leaving women in structurally disadvantaged positions (Nurlaelawati, 2010). This issue is further compounded by socio-cultural factors that

normalize male authority in marital decisions, thereby limiting women's agency and bargaining power within polygamous arrangements (Robinson, 2009).

In addition, the legal status of children born from poligami siri remains a significant concern. Although recent legal developments in Indonesia have attempted to improve child recognition, the lack of formal marriage documentation continues to complicate issues of civil registration, paternal lineage, and access to social rights (Lindsey, 2012). This situation directly contradicts the fundamental principles of child protection and raises serious questions about the alignment of such practices with both national and international legal standards (Cammack et al., 2012).

From an Islamic legal perspective, the problem extends beyond formal legality to substantive justice (Thorik & Pamula, 2025). While classical jurisprudence permits polygamy under strict conditions, contemporary scholars emphasize that such permissibility must be evaluated within the broader framework of *maqasid al-syari'ah*, which prioritizes the protection of human welfare and justice (Auda, 2008). Therefore, the persistence of poligami siri without adequate safeguards suggests a potential deviation from the ethical and philosophical foundations of Islamic law (Sarib et al., 2024).

Based on the above problem identification, this study formulates the following research questions. First, how is the practice of poligami siri situated within the Indonesian legal system, particularly in relation to the dualism between religious legitimacy and state recognition? Second, how can poligami siri be critically evaluated through the perspective of *maqasid al-syari'ah*, especially in terms of its compatibility with the protection of essential human interests? Third, what are the implications of poligami siri for the protection of women's and children's rights in Indonesia, and how can these implications be addressed through a more integrative legal framework? These questions are designed to move beyond descriptive analysis toward a more critical and evaluative approach, integrating legal, sociological, and normative Islamic perspectives.

Previous research on polygamy and unregistered marriage in Indonesia has produced significant insights, yet several limitations remain. For instance, Mark Cammack in his study *"Islamic Law in Indonesia's New Order"* (2012) examines the institutional development of Islamic family law and highlights the tension between state regulation and religious authority. While this study provides a strong legal-historical foundation, it does not specifically address the practical implications of unregistered polygamous marriages on vulnerable groups.

Similarly, Tim Lindsey in *“Monogamy, Polygamy and the Law in Indonesia”* (2012) analyzes the legal framework governing polygamy and the role of religious courts. His work emphasizes the regulatory challenges of enforcing monogamy principles; however, it remains largely focused on formal legal structures rather than informal practices such as poligami siri.

Research by Euis Nurlaelawati in *“Modernization, Tradition and Identity”* (2010) explores the application of Islamic law in Indonesian religious courts, including issues related to marriage and family disputes. Although this study offers valuable insights into legal practice, it does not incorporate a *maqasid*-based analysis to evaluate the ethical dimensions of polygamy.

Furthermore, Kathryn Robinson in *“Gender, Islam and Democracy in Indonesia”* (2009) discusses gender relations and women’s rights within Islamic discourse. Her work highlights structural inequalities affecting women, yet it does not specifically address the legal consequences of unregistered polygamous marriages.

In a more sociological approach, Sally Engle Merry (2006) examines legal pluralism and the localization of human rights norms. While her framework is highly relevant, it is not directly applied to the specific context of poligami siri in Indonesia.

Overall, previous studies tend to focus on either legal regulation, sociological dynamics, or gender issues in isolation. Few studies integrate these perspectives within a comprehensive *maqasid al-syari’ah* framework. This limitation highlights the need for a more holistic and normative analysis.

Despite the growing body of literature on polygamy and unregistered marriage, a significant research gap remains. Existing studies have not sufficiently examined poligami siri through an integrative framework that combines Islamic legal philosophy (*maqasid al-syari’ah*) with contemporary human rights and legal protection perspectives. Most research adopts a descriptive or doctrinal approach, focusing on legality rather than evaluating the substantive outcomes of such practices (Blackwood, 2007).

Moreover, there is a lack of critical analysis addressing whether the permissibility of polygamy in Islamic law can still be justified in contemporary contexts where its implementation often leads to harm and injustice. This gap is particularly important given the increasing emphasis on *maqasid* as a dynamic and contextual framework for interpreting Islamic law (Kamali, 2008).

This research represents a significant advancement in the study of Islamic family law by integrating *maqasid al-syari'ah* with contemporary legal protection frameworks. Unlike previous studies that focus on formal legality or sociological description, this study adopts a normative-evaluative approach that prioritizes substantive justice and human welfare.

Conceptually, this study does not reject polygamy in absolute terms as recognized in Islamic law; rather, it critically rejects the practice of *poligami siri* when it fails to fulfill essential principles of justice (*al-'adl*), legal registration, and effective protection of rights. Within this framework, the permissibility of polygamy cannot be understood merely as formal religious compliance but must be assessed based on its ability to realize legal certainty, welfare, and substantive justice in accordance with the objectives of Islamic law.

The novelty of this research lies in three main aspects. First, it reconceptualizes polygamy not merely as a legally permissible institution but as a conditional practice that must fulfill the objectives of *maqasid al-syari'ah*. Second, it bridges the gap between Islamic legal theory and modern human rights discourse, particularly in relation to women's and children's rights (Auda, 2008). Third, it proposes a reconstructive framework for Islamic family law in Indonesia, emphasizing the necessity of legal registration as an integral part of *maqasid* fulfillment rather than a purely administrative requirement.

This study aims to achieve several interrelated objectives. First, it seeks to analyze the practice of *poligami siri* within the Indonesian legal and social context, identifying its underlying causes and structural dynamics. Second, it aims to evaluate the compatibility of *poligami siri* with the principles of *maqasid al-syari'ah*, particularly in terms of protecting essential human interests. Third, it intends to examine the implications of *poligami siri* for the protection of women's and children's rights, highlighting areas of vulnerability and injustice.

Finally, this study aims to formulate a conceptual framework for reconstructing Islamic family law in Indonesia, integrating *maqasid al-syari'ah* with contemporary legal protection mechanisms. Through this approach, the research aspires to contribute not only to academic discourse but also to policy development and legal reform.

RESEARCH METHOD

This study employs a normative legal research (yuridical-normative) design, focusing on the analysis of legal norms, principles, and doctrines governing polygamy and marriage registration in Indonesia. Normative legal research is particularly suitable for

examining inconsistencies between religious legitimacy and state law, as well as for evaluating legal practices through the framework of *maqasid al-syari'ah* (Hutchinson & Duncan, 2012).

This research applies several complementary approaches. First, the statutory approach is used to analyze relevant legal instruments, including Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), particularly regarding polygamy and marriage registration. Second, the conceptual approach is employed to examine the theoretical framework of *maqasid al-syari'ah*, focusing on its application as a normative tool for evaluating justice, welfare, and legal protection (Auda, 2008). Third, an optional case approach is utilized to illustrate practical implications of poligami siri, drawing from selected legal cases or documented practices to support analytical arguments (Lindsey, 2012).

This study relies on secondary data consisting of primary and secondary legal materials. Primary legal materials include statutory regulations such as the Indonesian Marriage Law and the Compilation of Islamic Law, as well as relevant court decisions where applicable. Secondary legal materials consist of scholarly works, including peer-reviewed journal articles (Scopus-indexed), academic books, and classical Islamic legal texts that discuss polygamy and *maqasid al-syari'ah*. These sources are used to construct both the doctrinal and theoretical foundations of the analysis.

The data are analyzed using a descriptive-analytical method, which involves systematically describing legal norms and practices, followed by critical evaluation. The analysis is further strengthened by employing the *maqasid al-syari'ah* framework as an evaluative tool, allowing the study to assess whether poligami siri aligns with the higher objectives of Islamic law, particularly in terms of justice, protection, and public welfare. This approach enables a shift from formalistic legal reasoning toward a more substantive and purposive interpretation (Kamali, 2008).

FINDINGS AND DISCUSSION

The Practice of Unregistered Polygamy (Poligami Siri) in Indonesia

The practice of *poligami siri* in Indonesia represents a complex socio-legal phenomenon shaped by the interaction between religious norms, cultural traditions, and state legal frameworks (Akmal et al., 2024). Conceptually, poligami siri refers to a form of polygamous marriage conducted according to Islamic religious requirements—such as the

presence of a guardian (*wali*), witnesses, and a marriage contract (*akad*)—but without official registration by state authorities. As a result, such marriages are considered religiously valid but lack formal legal recognition within the Indonesian legal system (Cammack et al., 2012).

In the context of Indonesian positive law, the regulation of polygamy is explicitly designed to ensure legal control and protection for all parties involved, particularly women and children. Under Law No. 1 of 1974 on Marriage and its amendment through Law No. 16 of 2019, polygamy is not prohibited outright but is treated as an exception to the general principle of monogamy. A husband seeking to practice polygamy must first obtain permission from the Religious Court, which functions as a legal safeguard to assess the legitimacy and necessity of the request. The law further requires the consent of the existing wife or wives, proof of financial capacity to provide adequate maintenance (*nafkah*), and assurance of equal and fair treatment among all wives and children (Pamula, 2026). These requirements reflect the state's attempt to balance religious accommodation with legal protection by ensuring that polygamy is only permitted under strict and measurable conditions. However, in practice, *poligami siri* often bypasses these legal mechanisms entirely, rendering judicial oversight ineffective and increasing the risk of injustice, particularly for women and children who consequently lose access to legal protection and enforceable rights (Lindsey, 2012).

From a definitional standpoint, *poligami siri* is characterized by its informal nature and its reliance on religious legitimacy rather than state legality. This distinction is crucial in understanding its broader implications, as it creates a dual legal status in which the marriage is socially and religiously acknowledged but legally invisible (Daniela et al., 2024). This invisibility has profound consequences for the enforcement of rights and obligations, particularly in relation to women and children (Bedner & Van Huis, 2010).

In terms of its characteristics, *poligami siri* typically involves secrecy or limited public disclosure, especially when the husband does not obtain formal permission from the religious court as required by Indonesian marriage law. It often occurs outside institutional oversight, thereby limiting the possibility of legal intervention in cases of dispute or injustice. Moreover, such marriages tend to lack formal documentation, which is essential for accessing legal remedies in matters such as divorce, inheritance, and child custody (Lindsey, 2012).

The persistence of poligami siri in Indonesia can be attributed to several interrelated factors. One of the primary factors is economic constraint. Many individuals perceive the process of legal marriage registration and court approval for polygamy as financially burdensome and administratively complex. Consequently, they opt for informal arrangements that are perceived as simpler and more accessible, despite their legal risks (Butt, 2014).

Religious factors also play a significant role in sustaining the practice. For many Muslims, the fulfillment of religious requirements is considered sufficient to legitimize a marriage, regardless of state recognition. This perspective is often reinforced by traditional interpretations of Islamic law that prioritize formal contractual elements over administrative procedures. As a result, the obligation to register marriages is sometimes viewed as secondary or even unnecessary (Ardi et al., 2025).

In addition to economic and religious considerations, cultural factors contribute to the استمرار of poligami siri. In certain communities, polygamy is culturally accepted as part of social norms, particularly when associated with male authority and status. These cultural perceptions often legitimize the practice and reduce social resistance, even when it conflicts with formal legal standards (Robinson, 2009).

From a legal perspective, the status of poligami siri illustrates a clear dichotomy between religious and state law (Hidayati et al., 2025). Under Islamic jurisprudence, polygamy is permissible provided that the husband fulfills specific conditions, including the ability to act justly among wives. Therefore, a polygamous marriage conducted in accordance with these requirements may be considered valid in a religious sense (Kamali, 2008). However, Indonesian positive law, particularly Law No. 1 of 1974 on Marriage and its amendments, requires that all marriages be officially registered to obtain legal recognition. Furthermore, polygamy is only permitted under strict conditions, including court approval and the consent of existing wives.

The failure to comply with these legal requirements renders poligami siri unrecognized by the state, thereby excluding it from formal legal protection. This lack of recognition has significant implications, as it prevents affected parties from accessing legal remedies and protections provided by the state. Consequently, while poligami siri may fulfill religious criteria, it fails to meet the standards of legal certainty and protection mandated by national law (Bowen, 2003).

This dual status—religiously valid yet legally unrecognized—creates a structural vulnerability that disproportionately affects women and children. It highlights the limitations of relying solely on formalistic interpretations of religious law without considering the broader objectives of justice and welfare. In this context, the practice of poligami siri raises critical questions about the relationship between legality, legitimacy, and justice within both Islamic and national legal frameworks.

Aspect	Formal Fikih Perspective	State Law Perspective (Indonesia)	<i>Maqasid al-syari'ah</i> Perspective
Basic Legality	Valid if pillars and conditions of marriage are fulfilled (<i>wali, witnesses, ijab-qabul</i>)	Not legally recognized without official registration and court approval	Conditionally acceptable only if it ensures benefit (<i>maslahah</i>) and avoids harm (<i>mafsadah</i>)
Polygamy Status	Permissible with justice as a requirement	Restricted and requires strict legal procedure	Permissible only when substantive justice is realized
Marriage Registration	Not a classical requirement for validity	Mandatory for legal recognition	Essential if it protects rights and public welfare
Position of Wife	Recognized as wife religiously	Often unprotected legally	Must be protected in dignity, rights, and welfare
Children's Legal Status	Legitimate if marriage is religiously valid	Administrative problems may arise regarding civil registration	Child protection is central under <i>hifz al-nasl</i>
Maintenance Rights (Nafkah)	Husband remains obligated religiously	Difficult to enforce legally	Must ensure economic justice under <i>hifz al-mal</i>
Inheritance Rights	Religious entitlement exists	Difficult to claim without legal evidence	Rights must be secured to prevent injustice
Justice Principle	Formal requirement in polygamy	Evaluated through procedural compliance	Substantive justice is the primary benchmark
Potential Harm	Often underemphasized in formal validity analysis	Considered through legal consequences	Central consideration; harm invalidates ethical legitimacy
Final Assessment of Poligami Siri	Valid if formal conditions are fulfilled	Invalid / unrecognized administratively	Problematic if it causes injustice, harm, or rights violations

Table 1.1 Matrix of Poligami Siri in Formal Fikih, State Law, and *Maqasid al-syari'ah* Perspectives

This matrix demonstrates a fundamental distinction between three normative perspectives in assessing *poligami siri*. From the perspective of formal fikih, the primary focus lies on the fulfilment of contractual pillars and conditions of marriage. Once these formal requirements are met, the marriage is generally considered valid, including in polygamous arrangements. In this framework, legality is largely determined by procedural compliance with religious requirements.

In contrast, the perspective of Indonesian state law emphasizes administrative legality and legal certainty. Marriage registration is not merely procedural but constitutes a prerequisite for legal recognition and enforceability of rights. Consequently, *poligami siri* occupies a legally weak position because it exists outside the formal legal system.

The *maqasid al-syari'ah* perspective introduces a more substantive evaluative framework. Rather than focusing solely on formal validity or administrative legality, *maqasid* examines whether a practice achieves justice, welfare, and protection of essential human interests. Under this framework, *poligami siri* cannot be assessed solely based on contractual validity; its legitimacy must also be evaluated in relation to its real-world consequences.

Thus, a polygamous marriage may be formally valid according to classical fikih, yet still problematic under *maqasid* if it produces *mafsadah* such as economic neglect, emotional harm, injustice, or the denial of women's and children's rights. This highlights an important shift from formal legality toward substantive justice, which becomes the central analytical framework of this study.

***Maqasid al-syari'ah* Analysis of Unregistered Polygamy (Poligami Siri)**

From the perspective of *maqasid al-syari'ah*, the evaluation of *poligami siri* cannot be limited to its formal compliance with classical juridical requirements. Instead, it must be assessed based on whether it fulfills the higher objectives of Islamic law, namely the protection of essential human interests (*al-daruriyyāt*) (Pelu et al., 2024). In this regard, the practice of unregistered polygamy raises serious concerns, as its empirical consequences often contradict the core *maqasid*, particularly in relation to lineage, property, life, and dignity.

First, in relation to *hifz al-nasl* (protection of lineage), *poligami siri* presents significant challenges concerning the legal status and recognition of children. Although children born from such unions may be acknowledged religiously, the absence of official

marriage registration complicates their civil status within the state legal system. This affects birth registration, paternal recognition, inheritance rights, and access to social services. From a *maqasid* perspective, lineage protection is not merely about biological legitimacy but also about ensuring legal certainty and social welfare for children. Therefore, practices that create ambiguity in a child's legal identity can be seen as undermining this objective (Auda, 2008)

Second, regarding *hifẓ al-māl* (protection of property), *poligami siri* often results in the عدم clarity of financial obligations, particularly concerning maintenance (*nafkah*) and inheritance (Pamula et al., 2026). In legally unregistered marriages, wives frequently lack enforceable claims to financial support, as the absence of legal documentation prevents them from seeking redress through formal institutions. Similarly, children may face difficulties in claiming inheritance due to unclear legal status. This situation contradicts the *maqasid* principle that emphasizes the fair distribution and protection of wealth as a means of ensuring social justice and economic stability (Kamali, 2008).

Third, in the context of *hifẓ al-nafs* (protection of life and well-being), *poligami siri* may expose women to various forms of vulnerability, including psychological distress, economic insecurity, and potential domestic violence. The lack of legal protection mechanisms means that women in such marriages often have limited recourse in cases of abuse or neglect. Moreover, the absence of institutional oversight increases the risk of injustice, particularly when the husband fails to fulfill his obligations of fairness and responsibility. From a *maqasid* standpoint, any practice that jeopardizes individual well-being and security is fundamentally problematic, even if it is formally permissible (Dusuki & Abdullah, 2024).

Fourth, in relation to *hifẓ al-'ird* (protection of dignity and honor), *poligami siri* frequently results in social stigma, particularly for women and children. Women in unregistered marriages are often marginalized and may be perceived as lacking legitimate marital status, which can affect their social standing and psychological well-being (Pamula & Hidayat, 2025). Children may also experience discrimination due to uncertainties surrounding their legal identity. This stigma directly contradicts the *maqasid* objective of preserving human dignity and preventing harm (*raf' al-darar*), which is a fundamental principle in Islamic legal theory (Al-Raysuni, 2005).

Taken together, these analyses demonstrate that while *poligami siri* may fulfill the formal شروط (conditions) of classical Islamic jurisprudence—such as the presence of

consent, witnesses, and a marriage contract—it often fails to تحقق (realize) the substantive objectives of *maqasid al-syari'ah*. This distinction between formal validity and substantive justice is critical. Contemporary *maqasid* scholars argue that legal permissibility in Islam must always be evaluated in light of its outcomes (*ma'alāt al-a'āl*), particularly in terms of benefit (*maslahah*) and harm (*mafsadah*) (Auda, 2008).

In practice, poligami siri frequently contradicts the objectives of *maqasid al-syari'ah*, despite formally fulfilling the requirements of classical fikih. Its implementation often leads to harm, injustice, and the erosion of fundamental protections for women and children. Therefore, its permissibility cannot be assessed solely on the basis of formal compliance but must be re-evaluated through a *maqasid*-oriented framework that prioritizes justice, welfare, and human dignity.

This analysis underscores the need for a shift from a purely formalistic understanding of Islamic law toward a more substantive and purposive approach. In the context of contemporary Indonesia, such a shift is essential for aligning religious practices with both *maqasid* principles and modern legal standards of protection.

Implications for the Rights of Women and Children

The practice of *poligami siri* generates profound implications for the protection of women's and children's rights in Indonesia, particularly due to its lack of formal legal recognition. These implications are not merely incidental but structural, arising from the intersection of legal invisibility, gender inequality, and weak institutional enforcement (Mukhtar et al., 2026). As such, the consequences of unregistered polygamous marriages must be understood within a broader framework of legal protection and human rights.

One of the most fundamental implications is the absence of *legal certainty*. In the Indonesian legal system, marriage registration serves as the primary basis for recognizing rights and obligations between spouses and their children (Paikah et al., 2025). Without official documentation, women in poligami siri unions are not legally acknowledged as wives, which effectively nullifies their claims to maintenance, inheritance, and marital protection (Nelli et al., 2026). This legal uncertainty extends to children, whose civil status may be contested or limited in terms of paternal recognition and legal identity. Such conditions undermine the principle of legal certainty, which is essential for ensuring justice and the rule of law (Cammack et al., 2012).

Closely related to this issue is the difficulty of *accessing justice*. Women involved in unregistered polygamous marriages often face significant barriers when seeking legal remedies. The absence of formal marriage records prevents them from filing claims in religious courts or other legal institutions, particularly in cases of divorce, domestic violence, or financial neglect (Syukrawati et al., 2024). This exclusion from the legal system reflects a broader institutional gap, where legal protections exist in theory but are inaccessible in practice for those outside the formal framework (Bedner & Van Huis, 2010). As a result, women are frequently forced to rely on informal mechanisms of dispute resolution, which may lack fairness and accountability.

In addition, poligami siri contributes to heightened *economic and social vulnerability*. Women in such marriages often depend on their husbands for financial support, yet the absence of enforceable legal obligations leaves them exposed to neglect or abandonment (Jamilah & Izza, 2026). This vulnerability is further exacerbated in cases where the husband prioritizes one household over another, leading to unequal distribution of resources. Children, likewise, may experience economic insecurity due to limited access to inheritance rights and social welfare programs (Nasohah et al., 2025). These conditions reflect a broader pattern of marginalization, where legal invisibility translates into material deprivation (Nurlaelawati, 2010).

Another critical implication is the presence of *structural discrimination*. Poligami siri tends to reinforce existing gender hierarchies by privileging male authority while marginalizing women's rights. The ability of men to enter into unregistered polygamous marriages without institutional oversight creates an imbalance of power that disadvantages women, both legally and socially. Moreover, societal attitudes often stigmatize women in such marriages, perceiving them as lacking legitimacy or moral standing. This stigma extends to children, who may face discrimination due to uncertainties surrounding their legal and social status. Such patterns of discrimination highlight the intersection between legal norms and cultural perceptions in shaping social inequality (Robinson, 2009).

From a broader human rights perspective, these implications demonstrate that poligami siri is not merely a private or religious matter but a public issue with significant consequences for justice and equality (Suharsono et al., 2024). The lack of legal recognition effectively excludes women and children from the protections guaranteed by the state, thereby perpetuating cycles of vulnerability and marginalization (Amir et al., 2025). This

situation raises critical questions about the role of law in mediating between religious practices and the need to protect fundamental rights.

Furthermore, when viewed through the lens of *maqasid al-syari'ah*, these implications clearly indicate a failure to uphold the core objectives of Islamic law. The absence of legal certainty contradicts the protection of lineage (*hifz al-nasl*), economic vulnerability undermines the protection of property (*hifz al-māl*), exposure to harm violates the protection of life (*hifz al-nafs*), and social stigma conflicts with the protection of dignity (*hifz al-'ird*) (Abdullah et al., 2025). Therefore, the continued practice of poligami siri without adequate safeguards represents not only a legal deficiency but also a normative inconsistency within Islamic legal philosophy.

In sum, the implications of poligami siri for women and children are multidimensional, encompassing legal, economic, social, and cultural dimensions. These findings reinforce the argument that any evaluation of polygamy must move beyond formal legality toward a more substantive consideration of justice, protection, and human welfare.

Reconstruction of the *Maqasid* Perspective

The preceding analysis demonstrates that the practice of *poligami siri* in Indonesia often fails to fulfill the substantive objectives of Islamic law, despite its formal compliance with classical juridical requirements. This condition necessitates a reconstruction of the *maqasid*-based framework in evaluating the permissibility of polygamy, shifting the focus from formal legality toward substantive justice and public welfare (*maslahah*). Such reconstruction is essential in order to align Islamic legal norms with contemporary realities and the imperative of protecting fundamental human rights (Pelu et al., 2024).

First, the permissibility of polygamy must be reinterpreted on the basis of *maslahah* (public interest), rather than being treated as a fixed or unconditional legal allowance. Classical Islamic jurisprudence permits polygamy under specific conditions, particularly the requirement of justice among wives; however, contemporary *maqasid* scholars emphasize that this permissibility is inherently conditional and context-dependent. If the practice of polygamy leads to harm (*mafsadah*), inequality, or the violation of fundamental rights, then its permissibility must be reconsidered within the framework of *maqasid al-syari'ah* (Auda, 2008). This approach reflects a dynamic understanding of Islamic law, where legal rulings

are evaluated based on their outcomes and their ability to تحقق (realize) justice and welfare in society.

Second, the requirement of justice (*al-'adl*) in polygamy must be understood as a *substantive* rather than merely *formal* condition. In many cases, poligami siri fulfills the formal elements of marriage but fails to ensure equitable treatment in terms of emotional support, financial distribution, and social recognition. Contemporary Islamic legal theory argues that justice cannot be reduced to procedural compliance; instead, it must be measured in terms of actual outcomes and lived experiences. The Qur'anic emphasis on justice in polygamy has been interpreted by modern scholars as a stringent condition that is difficult, if not impossible, to fulfill in practice, thereby limiting the applicability of polygamy in contemporary contexts (Kamali, 2008). This interpretation strengthens the argument that formal compliance alone is insufficient to justify the practice.

Third, the *registration of marriage* should be reconceptualized as an integral part of *maqasid al-syari'ah*, rather than merely an administrative requirement imposed by the state. Marriage registration serves crucial functions in ensuring legal certainty, protecting rights, and preventing disputes. From a *maqasid* perspective, these functions directly relate to the protection of lineage (*hifẓ al-nasl*), property (*hifẓ al-māl*), and dignity (*hifẓ al-'ird*). Therefore, the failure to register marriages, as in the case of poligami siri, cannot be justified on the grounds of religious validity alone, as it undermines the broader objectives of Islamic law (Bedner & Van Huis, 2010). In this sense, compliance with state registration requirements should be viewed as part of fulfilling religious obligations, rather than as an external or secondary concern.

Fourth, there is a pressing need to integrate state law and Islamic legal values in a more coherent and complementary manner. The dichotomy between religious legitimacy and legal recognition has created a fragmented legal system in which individuals may selectively adhere to one normative framework while disregarding the other. This fragmentation weakens both legal authority and social justice. A *maqasid*-based approach offers a pathway for bridging this gap by emphasizing shared objectives, such as justice, welfare, and the protection of human rights. By aligning state regulations with *maqasid* principles, it becomes possible to develop a more holistic legal framework that is both religiously legitimate and legally enforceable (An-Na'im, 2008).

Furthermore, this integrative approach requires a shift in legal and religious discourse, moving away from rigid formalism toward a more contextual and purposive interpretation of Islamic law. Scholars have argued that *maqasid al-syari'ah* provides a flexible and adaptive framework capable of addressing contemporary challenges, including issues related to gender justice and legal protection (Masud, 1995). In the context of poligami siri, such an approach allows for a critical reassessment of traditional doctrines in light of their real-world implications.

From a broader theoretical perspective, *maqasid al-syari'ah* should not be understood merely as an analytical tool for assessing the consequences of legal practices, but also as a normative framework for re-evaluating their ethical validity. In other words, the legitimacy of a legal practice in Islamic law cannot be determined solely by its formal compliance with classical legal requirements; it must also be assessed based on whether it produces benefit (*maslahah*) or harm (*mafsadah*) in practical reality. When a legally permissible practice consistently results in systemic injustice, vulnerability, and social harm, its ethical validity becomes subject to critical reassessment. Therefore, in the context of poligami siri, *maqasid al-syari'ah* functions not only as an evaluative instrument for measuring impacts but also as a corrective framework for questioning whether the continuation of such practices remains consistent with the higher objectives of Islamic law, namely justice, welfare, and human dignity (Auda, 2008).

In conclusion, the reconstruction of the *maqasid* perspective on polygamy highlights the ضرورة (necessity) of prioritizing substantive justice over formal legality. Polygamy, as a legal institution, cannot be evaluated solely based on its compliance with classical شروط (conditions); rather, it must be assessed in terms of its ability to achieve the higher objectives of Islamic law. Where poligami siri fails to protect the rights of women and children, it cannot be considered consistent with *maqasid al-syari'ah*. This reconstruction not only provides a more ethically grounded framework for evaluating polygamy but also contributes to the broader project of reforming Islamic family law in Indonesia.



Figure 1 : Framework of Poligami Siri in the Perspective of *Maqasid al-syari'ah* and the Protection of Women's and Children's Rights in Indonesia

Unregistered polygamy (poligami siri) in Indonesia exists in a dual legal space — religiously valid under classical fikih yet legally unrecognized by the state — and when evaluated through the lens of *maqasid al-syari'ah*, it consistently fails to uphold the four essential protections of Islamic law: lineage (*hifz al-nasl*) is undermined by unclear child status, property (*hifz al-māl*) by unenforceable maintenance and inheritance claims, life and wellbeing (*hifz al-nafs*) by exposure to neglect and abuse, and dignity (*hifz al-'ird*) by social stigma — all of which translate into concrete harms for women and children in the form of legal uncertainty, limited access to justice, economic vulnerability, and structural gender discrimination.

This reality demands a reconstruction of how polygamy is understood, its permissibility must shift from formal religious compliance toward substantive justice grounded in *maslahah* (public welfare), treating marriage registration not as a bureaucratic formality but as a *maqasid* obligation, enforcing stricter court-supervised polygamy regulation, and integrating Islamic legal values with state law — together forming the foundation for comprehensive legal protection of women's and children's rights in Indonesia.

CONCLUSION

This study concludes that poligami siri is problematic when assessed through the framework of *maqasid al-syari'ah*. Although it may fulfill the formal requirements of classical Islamic jurisprudence, its practical consequences often contradict the core objectives of Islamic law, particularly in protecting lineage, property, well-being, and dignity. Poligami siri fails to ensure adequate protection for women and children. The absence of legal recognition leads to uncertainty in marital status, limited access to justice, and increased economic and social vulnerability. These conditions indicate that the practice does not align with principles of legal certainty and justice within both Islamic and national legal systems. Therefore, a reformulation of legal and normative approaches to polygamy is necessary. A

maqasid-based perspective emphasizes that legal permissibility must be grounded in substantive justice, not merely formal compliance.

Based on the findings of this study, several recommendations can be proposed to address the challenges posed by poligami siri and to strengthen the protection of women's and children's rights in Indonesia. First, stricter regulation of polygamy is needed, particularly through effective enforcement of court approval and justice requirements to prevent misuse. Second, marriage registration must be treated as a mandatory requirement, as it ensures legal certainty and protection of rights, and aligns with the objectives of *maqasid al-syari'ah*. Third, the integration of *maqasid al-syari'ah* into family law policy should be strengthened to promote a more justice-oriented legal framework. Finally, public education is essential to raise awareness about the legal and ethical consequences of poligami siri, particularly its impact on women and children.

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