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# Reconstructing Polygamy Regulations As A Framework For Family Protection : A Review Of Indonesian Marriage Law No. 1 Of 1974

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***Abstract:*** The regulation of polygamy in Islamic law and Indonesian marriage law is not only related to the permissibility and licensing procedures, but also the protection of the rights and interests of all family members. Problems arise when fulfilling formal requirements does not guarantee substantive protection for wives and children. This study aims to reconstruct the regulation of polygamy in Law Number 1 of 1974 concerning Marriage through the approach of the maqāṣid al-syarī'ah system of Jasser Auda to place family protection as the orientation of law implementation. This research is a normative legal research (doctrinal legal research) with a statutory, conceptual, and maqāṣid al-syarī'ah system approach. Primary legal materials include QS. An-Nisā' verse 3 and laws and regulations related to marriage, while secondary legal materials include classical fiqh literature, Jasser Auda's thoughts, and scientific journal articles. The results of the study indicate that court permission, wife's consent, economic capacity, and guarantees of justice need to be understood as a unified instrument of family protection, not merely administrative requirements. Through the six characteristics of Jasser Auda's systemic approach, polygamy regulations can be evaluated based on their ability to protect wives' rights, ensure the fulfillment of children's needs and care, and prevent harm. Regulatory reconstruction is directed at strengthening substantive examination and protecting family rights in legal implementation.

***Keywords:*** Polygamy, Maqāṣid Al-Syarī'Ah, Jasser Auda, Family Protection, Marriage Law.

***Abstrak:*** Pengaturan poligami dalam hukum Islam dan hukum perkawinan Indonesia tidak hanya berkaitan dengan kebolehan dan prosedur perizinan, tetapi juga perlindungan hak dan kepentingan seluruh anggota keluarga. Persoalan muncul ketika pemenuhan persyaratan formal belum menjamin perlindungan substantif bagi istri dan anak. Penelitian ini bertujuan merekonstruksi regulasi poligami dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan melalui pendekatan sistem *maqāṣid al-syarī'ah* Jasser Auda untuk menempatkan perlindungan keluarga sebagai orientasi penerapan hukum. Penelitian ini merupakan penelitian hukum normatif (*doctrinal legal research*) dengan pendekatan perundang-undangan, konseptual, dan sistem *maqāṣid al-syarī'ah*. Bahan hukum primer meliputi QS. An-Nisā' ayat 3 dan peraturan perundang-undangan terkait perkawinan, sedangkan bahan hukum sekunder



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mencakup literatur fikih klasik, pemikiran Jasser Auda, serta artikel jurnal ilmiah.. Hasil penelitian menunjukkan bahwa izin pengadilan, persetujuan istri, kemampuan ekonomi, dan jaminan keadilan perlu dipahami sebagai satu kesatuan instrumen perlindungan keluarga, bukan sekadar persyaratan administratif. Melalui enam ciri pendekatan sistem Jasser Auda, regulasi poligami dapat dievaluasi berdasarkan kemampuannya melindungi hak istri, menjamin pemenuhan kebutuhan dan pengasuhan anak, serta mencegah kemudaratan. Rekonstruksi regulasi diarahkan pada penguatan pemeriksaan substantif dan perlindungan hak keluarga dalam penerapan hukum.
***Kata Kunci:*** Poligami*, Maqāṣid Al-Syarī'Ah,* Jasser Auda*,* Perlindungan Keluarga*,* Hukum Perkawinan.

## A. Introduction

The permissibility of polygamy is often referred to in Surah An-Nisa, verse 3, which permits marriage to two, three, or four women, provided they are able to act justly. Meanwhile, Surah An-Nisa, verse 129, emphasizes the difficulty of humans being perfectly just between wives, although they are still commanded not to be completely biased toward one or the other. These two verses provide an important basis for discussing polygamy [1].

Indonesian marriage law has arrange about procedure polygamy this , in law In Indonesian marriage , the principle of marriage is essentially monogamy, but the court can grant permission for a husband to have more than one wife in accordance with statutory requirements. These provisions are regulated, among others, in Law No. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019, Government Regulation No. 9 of 1975 [2], and the Compilation of Islamic Law for Muslims. These regulations indicate that polygamy is not positioned as a right that can be exercised without limits, but rather as a legal possibility that must meet certain requirements.

Problems arise when fulfilling formal requirements does not necessarily guarantee substantive protection for the wife and children. Court permission, the wife's consent, economic capacity, and the promise to act fairly need to be viewed not merely as administrative procedures, but also as instruments to guarantee livelihood, continuity of care, certainty of legal status, and the child's right to education, health care, and basic needs [3].

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[1] Badan Litbang dan Diklat Kementetian Agama RI, *Al-Qur'an Dan Terjemahannya Lajnah*, 2019.

[2]"Undang-Undang (UU) Nomor 1 Tahun 1974 Tentang Perkawinan" (1974), https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974.Undang-undang (UU) Nomor 1 Tahun 1974 tentang Perkawinan.

[3] Viorizza Suciani Putri et al., "The Best Interest of the Child in Islamic Family Law: Declarative and Enforceable Custody Protection in Indonesia and Malaysia," *International Journal of Nusantara Islam* 14, no. 1 (2026): 273–90, https://doi.org/10.15575/ijni.v14i1.54393.

Law No. 1 of 1974 concerning Marriage stipulates several important requirements. Article 4 outlines the grounds for requesting permission for polygamy, while Article 5 stipulates requirements such as the wife's consent, the husband's ability to provide for his wife and children, and a guarantee that the husband will act fairly. The wife's consent is subject to exceptions under certain circumstances as stipulated by law. Therefore, these provisions must be read in their entirety, not based solely on a single requirement [4].

However, the existence of regulations does not necessarily prove that protection is effective. For example, a wife's consent needs to be examined in terms of freedom of consent, availability of information, and potential stress within the household. Economic capacity is also not solely assessed by income at the time of the application, but must be linked to the continued fulfillment of the needs of all family members after the polygamous marriage has taken place. Meanwhile, guarantees of justice need to be examined as an obligation whose implementation can be evaluated, not simply a statement or promise from the husband [5].

Previous studies that explain polygamy are the research of Analiansyah et al. (2024) entitled: " *Polygamy and Women's Rights: An Examination of Divorce Litigation in Sharia Court Rulings Pertaining to Revisions in Indonesian Matrimonial Legislation* ", [6]this study explains The practice of polygamy without the wife's consent can be linked to neglect and domestic violence. These risks are even greater when the husband lacks the financial stability to meet the family's needs. This situation demonstrates that polygamy is not only a matter of marriage permission, but also the husband's responsibility to provide for, protect, and fulfill the wife's rights. Strengthening legal protection for women in polygamous marriages. The law should not only address the legality of marriage but also consider justice, family well-being, prevention of violence, and the fulfillment of wives' rights. Therefore, reforming marriage regulations is necessary to ensure women are better protected when facing neglect or violence resulting from polygamous practices.

Further research that discusses polygamy that is relevant to this research is the research written by Muhammad Danil et al (2026), entitled: " *Uncovering Polygamy: A New Perspective from Al-Majmu' Syarh al-Muhadzdzab an-Nawawi through the Lens of*

[4] Undang-undang (UU) Nomor 1 Tahun 1974 tentang Perkawinan.

[5] Nur Shofa Ulfiyati, "Tinjauan Hak Asasi Manusia Tentang Izin Isteri Sebagai Syarat Poligami Dalam UU Perkawinan No.1 Tahun 1974," *De Jure: Jurnal Hukum Dan Syar'iah* 8, no. 2 (2016): 84–96, https://doi.org/10.18860/j-fsh.v8i2.3744.

[6] Analiansyah et al., "Polygamy and Women's Rights: An Examination of Divorce Litigation in Sharia Court Rulings Pertaining to Revisions in Indonesian Matrimonial Legislation," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 761–86, https://doi.org/10.29240/jhi.v9i2.10833.

*Maqāṣid al-Sharī'ah by Jasser Auda"* [7], examining the thoughts of Imam al-Nawawi in the book Al-Majmu' Syarh al-Muhadzdzab using the Maqāṣid al-Syarī'ah approach developed by Jasser Auda. This approach is used to broaden the understanding of polygamy, not only based on the provisions of fiqh, but also based on the objectives of Islamic law in realizing human welfare. Through Jasser Auda's perspective, the assessment of polygamy is expanded from merely fulfilling the formal provisions of fiqh to an evaluation of human welfare as a whole. These considerations include prevention of harm, emotional and psychological well-being, and the social conditions of the family. Thus, the permissibility of polygamy should not be understood as a permit that applies without consideration. Implementation needs to pay attention to the husband's capabilities, the fulfillment of the wife's rights, and the possibility of negative impacts on the family. The maqāṣid approach makes polygamy a permissibility that is limited by the demands of justice and benefit.

Although numerous studies on polygamy in Islamic law and positive law in Indonesia have been conducted, most previous research has examined the issue separately. Generally, previous research has focused on comparing the rules between Islamic jurisprudence and national law, or simply examining the reasoning of judges in court without examining the underlying sharia rationale behind these rules. On the other hand, recent research often focuses on the impact of polygamy on women, such as the study by Analiansyah et al. (2024), which examines unauthorized polygamy in relation to divorce, neglect of livelihood, and domestic violence. Meanwhile, studies using the perspective of *the maqāṣid al-syarī'ah* of Jasser Auda, such as the study by Danil et al. (2026), still predominantly examine classical Islamic jurisprudence texts such as al-Nawawi's book to examine the psychological and emotional aspects .

From these various studies, it is clear that there is little research linking the formal requirements in Law Number 1 of 1974 with real protection for all family members. To date, requirements such as court permission, the wife's consent, proof of economic capacity, and marriage registration are often considered merely administrative matters or merely tools to defend the wife's rights in disputes. In fact, these regulations serve to maintain the integrity of the entire family. This protection is not only for the wife, but also for the certainty of the legal status, livelihood, and future of the children ( *ḥifẓ al-nasl* and *ḥifẓ al-nafs* ), while also helping the husband to refrain from committing injustice. Therefore, this study aims to complement previous studies

[7] Muhammad Danil et al., "Uncovering Polygamy: A New Perspective from Al-Majmu' Syarh Al-Muhadzdzab an-Nawawi through the Lens of Maqāṣid Al-Sharī'ah by Jasser Auda," *Jurnal Kawakib* 7, no. 1 (2026): 138–54, https://doi.org/10.24036/kwkib.v7i1.453.

by examining how the requirements for polygamy in Indonesian law actually work as a means of comprehensive and fair protection for all parties within the family.

This study aims to reconstruct the regulatory framework for polygamy requirements in Indonesian positive law (Law Number 1 of 1974) through the *maqāṣid al-syarī'ah system approach* initiated by Jasser Auda. This approach is used to shift the old perspective that understands the requirements for polygamy—such as court permission, wife's consent, and ability to support — simply as administrative burdens or legal-formal limitations. Through a systems approach, these rules are re-examined as a unified mechanism designed to protect human dignity, maintain the integrity of family relations, and prevent harm to wives and children.

focuses on integrating positive legal analysis with the systemic concept of *maqāṣid al-syarī'ah* . While previous research has focused more on normative comparisons between fiqh and law or simply interpreting classical fiqh texts, this study presents a model of regulatory reconstruction that places justice and family protection as the primary objectives of law. Thus, this study offers a new perspective in assessing and strengthening polygamy licensing policies in Indonesia to be more responsive to the fulfillment of the rights and welfare of all family members.

## B. Research Methods

Normative legal research ( *doctrinal legal research* ) applies a combination of statute approach, conceptual *approach , and* contemporary *maqāṣid al-syarī'ah system approach by Jasser Auda and maṣlaḥah theory* by al-Syathibi to analyze polygamy regulations in Law Number 1 of 1974, Government Regulation Number 9 of 1975, and Compilation of Islamic Law (KHI). The data used are sourced from *library research* which includes primary legal materials in the form of Al-Qur'anic texts (especially QS. An-Nisa: 3) and marriage legislation, secondary legal materials in the form of classical fiqh literature, theoretical works of Jasser Auda, and reputable journal articles, along with supporting tertiary legal materials. Data collection was carried out through thematic document inventory and selection, which were then analyzed qualitatively and descriptively by examining the functional relationship between administrative requirements—such as court permission, wife's consent, and certainty of financial capability—with the protection of family rights ( *ḥifẓ al-nafs* , *ḥifẓ al-nasl* , and *ḥifẓ al-māl* ), thus resulting in the reconstruction of polygamy regulations as an integrated legal protection instrument for all family members.

## C. Discussion and Research Results

### Legal Construction of Polygamy Regulation in Islamic Law and Indonesian Positive Law

The permissibility of polygamy in Islamic law is based on the QS. An-Nisa' verse 3:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُواْ فِي ٱلْيَتَٰمَىٰ فَٱنكِحُواْ مَا طَابَ لَكُم مِّنَ ٱلنِّسَآءِ مَثْنَىٰ وَثُلَٰثَ وَرُبَٰعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُواْ فَوَٰحِدَةً

*Meaning: And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) just one person.*(Q.S. An-Nisa: 3).

The above verse explains the permissibility of a man marrying more than one woman, with a maximum limit of four wives, and the requirement to act fairly. Islamic jurists (fuqaha) basically permit polygamy on the condition that the husband is able to treat his wives fairly and fulfill their rights in accordance with the provisions of sharia. This permissibility does not mean that the husband is free to marry an unlimited number of women. In Islamic law, the number of wives is limited to a maximum of four. The views on the permissibility of polygamy with these requirements are discussed by a number of scholars, including Imam Malik, Imam Syafi'i, scholars of the Hanafi school such as al-Sarakhsi and al-Kasani, and Ibn Qudamah from the Hanbali school [8].

According to Yusuf al-Qaradawi, polygamy is permitted in Islam on the condition that the husband is able to treat his wives fairly. This fairness must be realized in fulfilling the necessities of life, such as food, drink, clothing, shelter, and sustenance. If a husband feels unable to fulfill these obligations, then one wife is sufficient [9], as emphasized in QS. An-Nisā' verse 3. Thus, the permissibility of polygamy must be accompanied by the husband's ability to fulfill the rights of each wife and carry out his responsibilities in the family[10].

In line with this view. M. Quraish Shihab explains that QS. An-Nisā' verse 3 is not intended to require or specifically encourage polygamy. The practice of polygamy was known before the verse was revealed, so the verse is more appropriately understood as a provision that regulates and limits existing practices. Polygamy is not a choice that can be made without considering the circumstances and responsibilities of the husband. Its implementation needs to take into account the underlying reasons, the ability to fulfill the wife's rights, and the possibility of injustice in the household.

[8] Firmansyah Firmansyah, "Diskursus Makna Keadilan Dalam Poligami," *Mazahibuna: Jurnal Perbandingan Mazhab* 1, no. 1 (2019): 73–91, https://doi.org/10.24252/mh.v1i1.9507.

[9] Yusuf al-Qaradawi and يوسف القرضاوي, "معنى «ولن تستطيعوا أن تعدلوا بين النساء» (Makna 'Kamu Tidak Akan Dapat Berlaku Adil di Antara Istri-Istri')," *IslamOnline* فتاوى وأحكام الأسرة - (إسلام أون لاين), 2006, https://fiqh.islamonline.net/أن-تعدلوا-بين-النساء-ولوح-ولن-تستطيعوا/.

[10] Muzzakir et al., "Polygamy and Child Adoption in Islamic Law: A Comparative Study of Thought Muhammad Quraish Shihab and Zakir Naik," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (2024): 144–57, https://doi.org/10.32505/qadha.v11i1.9267.

Therefore, the permissibility of polygamy in Islam cannot be separated from the conditions that must be met and the responsibilities that accompany it [11].

Regulations regarding polygamy in Indonesia are contained in several laws and regulations. The main provisions are set out in Law Number 1 of 1974 concerning Marriage, which regulates the principles of marriage, the grounds that can be used as a basis for requesting polygamy, and the requirements that must be met by the husband. The implementation of these provisions is further elaborated in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage [12]. For Muslims, provisions regarding polygamy are also regulated in the Compilation of Islamic Law (KHI), the dissemination of which is based on Presidential Instruction Number 1 of 1991 [13].

Marriage law in Indonesia basically adheres to the principle of monogamy, namely that a man in principle may only have one wife and a woman may only have one husband. This provision is regulated in Article 3 paragraph (1) of Law Number 1 of 1974 concerning Marriage. However, the law provides the possibility for a husband to have more than one wife by fulfilling the specified requirements. Article 3 paragraph (2) states that the court can grant permission to a husband to have more than one wife if the parties concerned wish and the applicable legal provisions have been fulfilled. Granting permission for polygamy is not only based on the husband's desire to remarry, but must also take into account the reasons and requirements stipulated in the law [14]**.**

Article 4 paragraph (2) of the Marriage Law stipulates three reasons that can be the basis for the court to grant permission for polygamy, namely if the wife cannot carry out her duties as a wife, the wife has a physical disability or an incurable disease, or the wife cannot bear children. In addition, Article 5 paragraph (1) regulates the requirements that must be met, including the wife's consent, the husband's ability to guarantee the living needs of his wives and children, and a guarantee that the husband will treat his wives and children fairly. The wife's consent is not absolute because the law regulates exceptions in certain circumstances that must be assessed in accordance with legal provisions [15].

Based on Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage and Article 57 of the Compilation of Islamic Law (KHI), these reasons include

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[11] M Quraish Shihab, *Tafsir Al-Mishbah: Pesan, Kesan, dan Keserasian Al-Qur'an*, vol. 2 (Jakarta: Lentera Hati, 2002).

[12] Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan," Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1 § (1974).

[13] Republik Indonesia, "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam" (1991).

[14] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan.

[15] Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan.*Ibid*

circumstances where the wife is unable to carry out her duties as a wife, has a physical disability or an incurable disease, or is unable to bear children. In addition to these reasons, the husband must also meet the requirements to apply for polygamy. Article 5 paragraph (1) of the Marriage Law regulates three requirements, namely the wife's consent, the certainty that the husband is able to guarantee the living needs of his wives and children, and the guarantee that the husband will treat his wives and children fairly. Provisions regarding the wife's consent and the husband's ability to meet family needs are also regulated in Article 58 of the KHI. Meanwhile, Article 55 paragraph (2) of the KHI emphasizes that the main requirement for having more than one wife is the husband's ability to treat his wives and children fairly. Article 55 paragraph (3) of the KHI states that if these main requirements cannot be met, the husband is prohibited from having more than one wife. A request for polygamy is not sufficient if it is only based on the husband's desire to remarry.

**Polygamy Requirements as Legal Instruments for the Protection of Women and Children**

The wife's consent is one of the important requirements in applying for a polygamy permit as regulated in Article 5 paragraph (1) letter a of Law Number 1 of 1974 concerning Marriage. This provision provides space for the wife to express her attitude towards her husband's plan to remarry while also placing the wife as a party whose interests need to be considered in the decision-making process. This is important because polygamy is not only related to the husband's right to propose another marriage, but can also bring changes to the existing marital relationship, the wife's psychological condition, the economic stability of the household, the division of time and attention of the husband, and the implementation of responsibilities in the family. The wife's consent can be understood as one of the legal instruments to ensure that women's interests and rights remain part of the considerations in granting a polygamy permit [16]. In practice, the wife's consent should not only be treated as an administrative requirement proven through a written document. The consent needs to be assessed based on the actual circumstances, especially regarding the wife's freedom to determine her attitude. The court needs to provide the wife with an opportunity to provide information about the polygamy plan, the reasons put forward by the husband, and the possible impact on her married life and the fulfillment of her rights [17].

The examination also needs to consider whether the wife has received sufficient information regarding the plan, understands the potential consequences, and has had

[16] Mas'adah Mas'adah, "Konstruksi Persetujuan Istri dalam Perkara Izin Poligami Perspektif Hukum Islam: Dari Formalitas Administratif Menuju Pengujian Substantif," *TARBIYA ISLAMIA: Jurnal Pendidikan dan Keislaman* 16, no. 2 (2026): 113–27, https://doi.org/10.36815/tarbiya.v16i2.4795.

[17] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan.

the opportunity to express her opinion without threat, coercion, or pressure. This approach is necessary so that the wife's consent not only meets formal requirements but also reflects her conscious will. The wife's consent is crucial because the marital relationship creates rights and obligations for both parties[18].

When a husband proposes polygamy, changes in the family structure have the potential to impact the fulfillment of the wife's rights, including the right to a living wage, housing, attention, good treatment, and certainty in living in the household. In certain circumstances, polygamy can also create problems such as reduced economic needs, limited time with the husband, or uncertainty regarding the division of family responsibilities. The wife's involvement through the consent mechanism is important to provide space for expressing objections, needs, and concerns that may arise from the marriage plan[19].

From a women's protection perspective, a wife's consent acknowledges her status as a legal subject with interests and rights within the marital relationship. This consent provides the wife with the opportunity to express her views on decisions that directly impact her life. However, legal protection cannot depend solely on the presence or absence of consent. A wife who consents to polygamy retains the right to maintenance, adequate housing, good treatment, and the fulfillment of other rights in accordance with legal provisions. Conversely, a wife who rejects polygamy still has the right to present her reasons and objections during the examination process[20].

Protection of women through polygamy requirements also needs to be seen in terms of the husband's ability to maintain the fulfillment of his wife's rights after the next marriage is carried out. Economic capacity, for example, cannot be assessed solely on the basis of income at the time of the application, but must be linked to the family's actual needs and the continuity of income provision. Guarantees of fair treatment should not be merely a formal statement, but must be realized in the implementation of responsibilities towards wives, including meeting living needs and sharing time and attention appropriately. Assessment of these aspects is necessary because permission for polygamy can have long-term consequences for the wife's well-being, while the husband's responsibilities continue after permission is granted.

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[18] S Riyandi, "Syarat Adanya Persetujuan Isteri Untuk Berpoligami (Analisis Ushul Fikih Syafi'Īyyah Terhadap Undang-Undang Perkawinan Nomor 1 Tahun 1974)," *Jurnal Ilmiah Islam Futura* 15, no. 1 (2015): 111–42, https://doi.org/10.22373/jiif.v15i1.561.

[19] Uswatun Hasanah, Muhammad Iqbal Irham, and Pagar Pagar, "Keadilan Holistic Bagi Isteri Dalam Poligami: Perspektif Maslahat," *Law Jurnal* 6, no. 2 (2026): 322–34, https://doi.org/10.46576/lj.v6i2.8338.

[20] Makarimi et al., "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/10.18860/jfs.v7i1.2566.

Protection The protection of children is also an important aspect to consider when implementing polygamy requirements. Polygamous marriages not only have legal consequences for husband and wife, but can also impact the lives of children born from previous marriages and those born from subsequent marriages. Changes in family structure can impact the household's economic situation, the distribution of parental time and attention, parenting patterns, and the fulfillment of children's basic needs. In certain circumstances, these changes have the potential to cause problems if the husband is unable to share responsibilities proportionally or if subsequent marriages result in reduced attention to existing children. Therefore, polygamy requirements need to be understood not only as a mechanism for regulating marriage, but also as a legal instrument to ensure the fulfillment of children's rights and interests.

Legally, child protection in polygamous marriages relates to the parents' obligation to care for, educate, protect, and fulfill their children's needs. Law No. 1 of 1974 concerning Marriage, specifically Article 45, stipulates the obligation of both parents to care for and educate their children to the best of their ability. This obligation remains in place even when parents face changes in their married life. Meanwhile, Law No. 23 of 2002 concerning Child Protection, as amended, among others, by Law No. 35 of 2014, emphasizes the importance of protecting children's rights and the parents' responsibility to care for and fulfill their children's needs. These provisions demonstrate that the child's interests must remain a consideration in every family decision that may affect their life and well-being.

One aspect that needs to be considered in a polygamy permit application is the husband's economic ability to meet the needs of all family members. Economic ability is not solely assessed based on the amount of income or property ownership at the time the application is submitted, but needs to be linked to the number of family members, daily living expenses, education costs, health services, housing, and other children's needs. If subsequent marriages cause the family's economic resources to be divided without adequate planning, the child is at risk of experiencing a reduction in the fulfillment of needs that should be the responsibility of his parents. The economic ability requirements as stipulated in Article 5 paragraph (1) letter b of the Marriage Law are important in protecting children from the possibility of their basic rights being neglected due to changes in family structure.

In addition to economic capacity, guarantees of fair treatment are also closely related to child protection. Article 5 paragraph (1) letter c of the Marriage Law requires a guarantee that a husband will treat his wives and children fairly. In the context of child protection, justice is not only related to the distribution of income, but also concerns the continuity of care, parental attention, fulfillment of educational and health needs, and protection of the child's physical and psychological development.

Family justice should not be interpreted as always providing the same amount or form, but rather as adequately fulfilling a child's needs according to their circumstances and needs. Children who still require intensive care, for example, require attention and support appropriate to their developmental stage. A father's responsibilities cannot be considered complete simply because financial support has been provided; they must also be realized through involvement in the child's life and development [21]. In examining a polygamy permit application, the court must consider the existing family circumstances, including the number and ages of children, their educational and health needs, and the continuity of their care. These considerations are necessary to assess whether the husband has the real ability to carry out responsibilities for all family members after the polygamy is implemented. The examination must also consider whether plans for a subsequent marriage could potentially interfere with the fulfillment of the rights of children already born. Although the requirements in the Marriage Law specifically regulate the wife's consent, economic capacity, and guarantees of fair treatment, these three aspects are directly related to the likelihood of meeting the child's needs. Therefore, the assessment of a polygamy application must consider the family's overall condition and not focus solely on the fulfillment of documents or formal requirements.

Child protection must also extend to children born from subsequent marriages. Children from different marriages retain the right to receive care, education, health care, protection, and the fulfillment of their living needs from their parents in accordance with legal provisions. The presence of children from subsequent marriages does not eliminate the father's responsibility for previously born children [22]. Conversely, increased family responsibilities require husbands to manage their financial resources, time, and attention responsibly. If these obligations are not managed properly, an imbalance in the fulfillment of needs can arise between children from the first marriage and children from subsequent marriages. Therefore, the implementation of polygamy must be accompanied by a real commitment to ensure that no child is deprived of their rights due to the parents' decision to form a new family.[23]

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[21] Novita Eka Nurjanah, Fasli Jalal, and Asep Supena, "STUDI KASUS FATHERLESS: PERAN AYAH DALAM PENGASUHAN ANAK USIA DINI," *Kumara Cendekia* 11, no. 3 (2023): 261–70, https://doi.org/10.20961/kc.v11i3.77789.

[22]Huda Huda Noor Rahman et al., "Kekosongan Norma Sanksi Dan Implikasinya Terhadap Perlindungan Anak Pasca Perceraian Dalam Sistem Hukum Perkawinan Indonesia," *Maqasid: Jurnal Studi Hukum Islam* 15, no. 1 (2026): 337–49,https://journal.um-surabaya.ac.id/Maqasid/article/view/31085.

[23] Pitriani Pitriani and Syamsul Bahri, "Pemenuhan Hak Nafkah Anak Pasca Perceraian Menurut Undang-Undang Perkawinan dan Hukum Adat," *Jurnal Sosial dan Sains* 5, no. 1 (2025): 65–82, https://doi.org/10.59188/jurnalsosains.v5i1.31966.

## The Relevance of Maṣlaḥah Murlahah, Maṣlaḥah Ḍarūriyyah, and Ḥifẓ al-Nasl in the Regulation of Polygamy

Jasser Auda developed the concept of *maqāṣid al-syarī'ah* as a philosophical foundation in understanding and developing Islamic law through a systems approach . In his view, *maqāṣid* is not only understood as the goals to be achieved by sharia, but also becomes the basis for interpreting, evaluating, and formulating Islamic law so that it remains relevant to the development of the times and the needs of society. Thus, Jasser Auda's thinking can be understood as a *maqāṣid-based ijtihād approach* , namely the process of Islamic legal reasoning that makes the goals of sharia the main consideration in determining the law, while still paying attention to the relationship between text, context, and human welfare.

The requirements and mechanisms for granting permission for polygamy as regulated in Law Number 1 of 1974 concerning Marriage can be analyzed through the perspective of *maṣlaḥah mursalah* , namely benefits that are not based on specific provisions that explicitly stipulate their regulation in the text, but are in line with the general principles of Islamic law. In the context of marriage law, this approach provides a basis for understanding that the regulation of polygamy is not only related to the recognition of the permissibility of polygamy in Islamic law, but also with the authority of the state to determine requirements and procedures aimed at protecting the interests of the parties. Provisions regarding court permission, the reasons that can be used as a basis for submitting an application, and the requirements that must be met by the husband are forms of legal regulation that can be assessed based on the benefits and consequences for family life , polygamy regulations can be understood as part of *legal ijtihad* in determining the mechanism for implementing marriage that is in accordance with the needs of society, as long as the regulation does not conflict with the basic principles of sharia and aims to prevent harm.

From the perspective of *the maṣlaḥah mursalah (* concerning the welfare of the husband), the requirement for a permit for polygamy is relevant because the permissibility of polygamy does not in itself guarantee the fulfillment of the rights and interests of all family members. The practice of polygamy can cause problems if it is carried out without considering the husband's ability to meet the family's economic needs, the continuity of caregiving responsibilities, the protection of the wife, and the fulfillment of [24]children's rights. The state requires a legal mechanism that allows the applicant's reasons and abilities to be examined before permission is granted. This examination is intended to ensure that the application for polygamy is not based solely

[24] Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London; Washington: The International Institute of Islamic Thought (IIIT), 2008).

on the husband's personal wishes but also considers the potential legal and social consequences for the wife and children. Therefore, the benefit of polygamy regulations is not solely assessed by fulfilling formal requirements, but rather by the extent to which the implementation of these provisions can prevent harm and provide real protection to family members.

In terms of its importance, protecting the basic rights of family members can be linked to the concept of *maṣlaḥah ḍarūriyyah* , namely, benefits related to basic human needs and the continuation of a decent life. Not all administrative requirements for applying for polygamy automatically fall into the category of *ḍarūriyyah* . This assessment depends on the purpose, function, and consequences of the provisions in question [25]. In this case, protection of safety, basic rights, the continuation of family life, and the interests of children are strongly related to basic interests. Meanwhile, the court's permission procedure can be understood as a legal instrument to support the realization of this protection. Provisions regarding court permission and requirements for polygamy also serve to limit the possibility of arbitrary action within marital relations. Through the judicial system, applications for polygamy can be examined based on the reasons presented, the circumstances of the household, the husband's capabilities, and compliance with applicable legal requirements. This mechanism provides the court with the authority to assess whether the application meets statutory requirements. Thus, the decision to practice polygamy is not solely based on the husband's unilateral will, but must go through legal procedures that consider the interests of all parties involved. Within this framework, court permission serves as a means of legal oversight to strengthen legal certainty, prevent abuse of authority within the family, and protect the rights of wives and children.

From the perspective of contemporary *maqāṣid al-syarī'ah* , the analysis of polygamy regulations can be further developed by viewing the purpose of the law as an effort to realize the welfare of the family as a whole. Jasser Auda's approach provides a framework for understanding *maqāṣid* not only as a list of objectives to be maintained, but also as an orientation in assessing the legal system, the relationship between components, openness to the development of knowledge, and the impact of the application of the law on society. Through this approach, polygamy provisions are not only assessed based on their compliance with formal procedures, but also need to be examined based on the ability of the regulations to achieve the goal of family protection. The main question is whether the implementation of the rules is able to guarantee the fulfillment of the rights of wives and children, maintain the responsibilities of husbands, prevent neglect, and provide certainty regarding the legal status of family members.

[25]Jasser Auda, *Maqasid Al-Shariah*...hlm. 78.

Within this framework, the concept of *ḥifẓ al-nasl* has important relevance. In general, *ḥifẓ al-nasl* is related to the protection of offspring and the continuity of generations. In the development of contemporary *maqāṣid al-syarī'ah thinking* , this protection orientation can be interpreted more broadly by considering the interests of children, the continuity of care, education, health, and a family environment that supports their development. This broadening of the analysis does not mean that all of these elements constitute the classical definition of *ḥifẓ al-nasl* or that Jasser Auda formulated them all identically, but rather it is an application of *the maqāṣid orientation* to family issues in the context of modern society.

Thus, *ḥifẓ al-nasl* in the analysis of polygamy regulations is not sufficiently understood as an effort to maintain the biological existence of offspring. This concept can also be used as a basis for assessing whether the implementation of polygamy supports the continuity of responsibility towards children and ensures the fulfillment of their rights. Children still have the right to support, education, health care, care, and certainty of legal status, regardless of changes in family structure due to polygamy. If subsequent marriages result in reduced fulfillment of children's needs or result in the neglect of parental responsibilities, this situation must be taken into account in assessing whether or not the welfare has been achieved. Therefore, the protection of offspring in this context is related to the continuation of a decent life for children, not just the existence of offspring themselves.

**Reinterpreting Polygamy Regulation through Jasser Auda's Six Systems Features**

The regulation of polygamy in Islamic law and Indonesian marriage law needs to be understood through an approach that is not oriented towards normative fulfillment and licensing procedures, but also considers the legal objective of protecting the rights and interests of all family members. Jasser Auda's thinking through a systems approach *provides* an analytical framework for reinterpreting the regulation through six characteristics, namely cognitive nature , wholeness , openness , *interrelated* hierarchy , multidimensionality , and goal orientation ( *purposefulness* ) [26].

Cognitively , understanding the permissibility of polygamy is positioned as a matter of legal interpretation that requires consideration of the relationship between the text, context, and objectives of sharia. Surah An-Nisa' verse 3 provides the basis for the permissibility of polygamy, provided it meets the requirements of justice. However, this permissibility cannot be understood as a right that separates the husband's responsibility to fulfill the rights of his wife and children. In this context, the interpretation of polygamy must consider the husband's actual ability to fulfill his family obligations, without ignoring applicable legal provisions.

[26] Jasser Auda, *Maqasid Al-Shariah…*hlm. 79.

The principle of integrity requires that polygamy regulations be read as part of an interconnected family law system. The principle of monogamy, the reasons for applying for polygamy, the wife's consent, economic capacity, and guarantees of fair treatment cannot be assessed separately from the protection of children's rights and the continuity of parenting[27]. Fulfilling one requirement does not in itself prove that all family interests are protected. Therefore, the examination of polygamy applications must take into account the family's circumstances as a whole.

The principle of transparency further provides space for the use of relevant information and knowledge in assessing the implementation of regulations. The wife's consent needs to be examined based on freedom of choice, adequacy of information, and understanding of the consequences of polygamy[28]. Economic capacity also needs to be assessed based on the actual needs of all family members, not just income at the time of the application. Furthermore, knowledge of children's psychological development and family dynamics can be used to help understand the potential impacts of polygamy proportionally. The interrelated hierarchy places legal requirements as instruments to achieve more fundamental protection goals. Court permission, the wife's consent, economic capacity, and guarantees of fairness are related to the goal of preventing injustice and ensuring the fulfillment of family members' rights. Within the framework of *maqāṣid al-syarī'ah* , these goals can be linked to *maṣlaḥah mursalah* as the basis for considering benefits in legal regulations, *maṣlaḥah ḍarūriyyah* in protecting basic needs, and *ḥifẓ al-nasl* in protecting offspring and responsibility for the lives of children.

Meanwhile, multidimensionality requires that polygamy be assessed through legal, religious, economic, social, psychological, and rights protection dimensions. The permissibility of polygamy under Islamic law does not automatically eliminate the obligation to comply with national legal requirements. Similarly, fulfilling economic capacity is not sufficient to ensure that parental attention, care, education, health, and emotional needs of children will be met. All these dimensions need to be considered to obtain a more comprehensive picture of the consequences of polygamy[29].

The principle *of purposefulness* places legal objectives as the primary orientation in assessing the implementation of polygamy regulations. The regulation's success is

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[27] Wirastri et al., "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.

[28] Aisyah Aisyah, "Konsep Hukum Prosedur Mengajukan Izin Poligami Pada Pengadilan Agama Berdasarkan Hukum Positif Di Indonesia," *Jurnal Ilmiah Advokasi* 7, no. 1 (2019): 43–51, https://jurnal.ulb.ac.id/index.php/advokasi/article/view/244.

[29] Faizah et al., "Kehidupan Anak Yang Orang Tuanya Poligami Di Desa Sagu Flores Timur," *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum Dan Syariah* 11, no. 1 (2022): 19–40, https://doi.org/10.52051/ulumulsyari.v11i1.154.

measured not only by fulfilling administrative requirements or obtaining court permission, but also by its ability to protect the wife's rights, ensure the fulfillment of children's needs, prevent neglect, and ensure the husband's continued responsibility[30]. This orientation does not negate the permissibility of polygamy, but rather places it within a framework of responsibility and public welfare, which are considered in the application of the law.

**From Formal Legal Compliance to Substantial Family Protection in Polygamous Marriages**

The regulation of polygamy in Indonesian marriage law relates not only to fulfilling licensing requirements and procedures, but also to protecting the rights and interests of all family members. Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019, adheres to the principle of monogamy by allowing polygamy based on legal requirements. Article 4 regulates the grounds for applying for polygamy, while Article 5 stipulates requirements such as the wife's consent, assurance of the husband's ability to provide for his wife and children, and a guarantee of fair treatment.

These provisions show that polygamy is not a right that can be exercised without limits, but must follow legal mechanisms that take into account the circumstances and interests of the family. However, fulfilling formal requirements does not necessarily guarantee the actual implementation of family protection. A wife's consent, for example, cannot be assessed solely on the basis of a written document; it must also be considered whether the consent was given consciously, based on adequate information, and without coercion.

The husband's economic capacity must also be assessed based on the needs of all family members and the sustainability of providing for the family after polygamy is implemented [31]. Likewise, guarantees of justice are not sufficient merely through the husband's statement; they must be realized through the provision of maintenance, the division of time and responsibilities, and attention to the needs of the wife and children. Changes in family structure due to polygamy must also be considered because they can affect the economic situation, parenting, education, health, and psychological well-being of children [32]. Therefore , the assessment of polygamy must consider the family's overall situation, not just the completeness of documents and compliance with licensing procedures. From the perspective of Jasser Auda's maqāṣid al-syarī'ah, the provisions

[30] Wirastri et al., "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms."

[31] Alfi Syahrin, Ali Sodiqin, and Abdul Rahim Hakimi, "SOCIOLOGICAL INTERPRETATION BY RELIGIOUS COURT JUDGES: Views of Bantul Religious Court Judges on the Husband's Financial Capability Requirement for Polygamy," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 2 (2022): 207–22, https://doi.org/10.14421/ahwal.2022.15203.

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

on polygamy need to be understood as part of a legal system aimed at realizing benefits and preventing harm. This systemic approach places the wife's consent, economic capacity, guarantees of justice, and court permission as interrelated elements in family protection [33]. The concept of maṣlaḥah mursalah can be used to assess the benefits of polygamy regulations, while maṣlaḥah ḍarūriyyah relates to the protection of basic human needs [34].

ḥifẓ al-nasl is relevant to assessing the protection of offspring, the continuity of parenting, and the fulfillment of children's rights [35]. With this framework, the permissibility of polygamy is not only analyzed based on normative provisions, but also based on its impact on family life and the implementation of husband's responsibilities.

**Reconstructing a Maqāṣid-Based Polygamy Regulation Framework for Family Protection in Indonesia**

The reconstruction of polygamy regulations based on maqāṣid al-syarīʻah aims to strengthen family protection by integrating legal requirements, permitting procedures, and the rights of family members. Through Jasser Auda's systems approach, regulations are evaluated using six interconnected features: cognition, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. This reconstruction emphasizes informed and voluntary spousal consent, the husband's financial capacity, equitable treatment, protection of children's welfare, and effective post-permission legal safeguards. From the perspective of maqāṣid al-syarīʻah, these reforms reflect maṣlaḥah mursalah, maṣlaḥah ḍarūriyyah, and ḥifẓ al-nasl, ensuring that polygamy regulations prioritize family welfare, fundamental rights, and the sustainable fulfillment of parental responsibilities.

These three concepts need to be used proportionally, taking into account the differences in their respective functions and levels of analysis. Therefore, the reconstruction of polygamy regulations does not have to be interpreted as eliminating the permissibility of polygamy or replacing all applicable legal provisions.

Reconstruction can be directed at strengthening interpretation, the quality of case examinations, the protection of rights after permission is granted, and evaluating the effectiveness of the policy. If the development requires new obligations or requirements, further study and an appropriate legal basis are needed. Thus, the

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[33] Galuh Retno Setyo Wardani and Khoirul Hidayah, "Sanksi Pidana Pelaku Poligami Siri Di Indonesia Perspektif Maqashid Syari'ah Jasser Auda," *Hukum Islam* 22, no. 1 (2022): 95–123, https://doi.org/10.24014/jhi.v22i1.13798.

[34] Muh. Adistira Maulidi Hidayat and Usep Saepullah, "Maṣlahaḥ Mursalah Dan Penerapannya Dalam Hukum Keluarga," *Minhaj: Jurnal Ilmu Syariah* 5, no. 1 (2024): 45–61, https://doi.org/10.52431/minhaj.v5i1.2233.

[35] Alwan Subaki and Khafid Abadi Khafid, "Reinterpretasi Ḥifẓ An-Nasl Menurut At-Ṭāhir Bin 'Āsyūr Dan Relevansinya Terhadap Konsep Ketahanan Keluarga," *QISTHOSIA : Jurnal Syariah Dan Hukum* 6, no. 1 (2025): 12–24, https://doi.org/10.46870/jhki.v6i1.1489.

regulatory framework for polygamy based on *the maqāṣid al-syarī'ah* places family protection as the orientation in the implementation of the law. The success of the regulation is not only related to compliance with procedures, but also needs to be assessed by its ability to protect the rights of wives and children, ensure the responsibility of husbands, prevent harm, and support the continuation of a decent family life. This framework is a proposed normative development that can serve as a basis for evaluating and improving polygamy regulations in Indonesia.

## D. Conclusion

The regulation of polygamy in Law Number 1 of 1974 concerning Marriage needs to be understood not only as a regulation of licensing requirements and procedures, but also as an instrument for protecting the rights and interests of all family members. The wife's consent, economic capacity, guarantees of justice, and court permission must be substantively assessed so that they do not stop at fulfilling administrative requirements, but truly support the protection of wives and children.

Using Jasser Auda's maqāṣid al-syarīʿah system approach, the implementation of polygamy regulations needs to be evaluated based on the legal objectives, the interrelationships between provisions, and their impact on the family. Regulatory reconstruction is directed at strengthening substantive examination, fulfilling the wife's rights, ensuring the continuity of care and the needs of children, and preventing harm. Thus, the permissibility of polygamy is not solely measured by the fulfillment of legal procedures, but also by the extent to which its implementation achieves justice and family protection.

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