

Polygamy in the Perspective of Contemporary Islamic Law: A Normative and Contextual Analysis of Nasr Hamid Abu Zaid's Thought

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Abstract: Polygamy remains a controversial practice in Islamic society in Indonesia, especially when linked to the principles of justice and gender equality. Although Marriage Law No. 1 of 1974 and a number of other regulations have restricted polygamy through administrative and substantive requirements, practices in the field show weak control and numerous procedural violations. This gap between legal norms and social practices demonstrates the failure of the law to provide protection, especially for women. This study aims to analyze the regulation of polygamy in Indonesia from the perspective of Nasr Hamid Abu Zaid's thinking, which emphasizes the importance of maqashid al-syariah as the basis for the validity of Islamic law. This study is a normative legal study with a qualitative approach, through a documentary study of legislation, legal literature, and the thoughts of modern Islamic legal figures. The results of the study show that the regulation of polygamy in Indonesia has not fully integrated the principle of maqashid, both in the substance of the law and in its implementation in court. Legal provisions tend to be legal-formal in nature without addressing the ethical, social, and psychological dimensions of the practice of polygamy. Nasr Hamid Abu Zaid's thinking emphasizes that the permissibility of polygamy must depend on substantive justice, not merely procedural validity. This view offers a critical framework for reforming Islamic family law to be more contextual, responsive, and just. It is important to reform regulations to ensure that the law truly serves as an instrument of protection, not merely a means of legitimizing social inequality.

Kata Kunci:

Poligami, Perspektif Hukum Islam, Kontemporer, Pemikiran Nasr Hamid Abu Zaid.

Abstrak: Poligami masih menjadi praktik kontroversial dalam masyarakat Islam di Indonesia, khususnya ketika dikaitkan dengan prinsip keadilan dan kesetaraan gender. Meskipun Undang-Undang Perkawinan Nomor 1 Tahun 1974 dan sejumlah regulasi lainnya telah membatasi poligami melalui syarat administratif dan substantif, praktik di lapangan menunjukkan lemahnya kontrol dan banyaknya pelanggaran prosedural. Ketimpangan antara norma hukum dan praktik sosial ini memperlihatkan kegagalan hukum dalam memberikan perlindungan, khususnya bagi perempuan. Penelitian ini bertujuan untuk menganalisis regulasi poligami di Indonesia dalam perspektif pemikiran Nasr Hamid Abu Zaid yang menekankan pentingnya *maqashid al-syariah* sebagai dasar keabsahan hukum Islam. Jenis penelitian ini adalah hukum normatif yuridis dengan pendekatan kualitatif, melalui studi dokumentasi terhadap peraturan perundang-undangan, literatur hukum, serta pemikiran tokoh hukum Islam modern. Hasil studi menunjukkan regulasi poligami di Indonesia belum mengintegrasikan prinsip *maqashid* secara utuh, baik dalam substansi hukum maupun dalam pelaksanaannya di pengadilan. Ketentuan hukum cenderung bersifat legal-formal tanpa menjangkau dimensi etis, sosial, dan psikologis dari praktik poligami. Pemikiran Nasr Hamid Abu Zaid menegaskan bahwa kebolehan poligami harus bergantung pada keadilan substantif, bukan sekadar keabsahan prosedural. Pandangan ini menawarkan kerangka kritis dalam mereformasi hukum keluarga Islam agar lebih kontekstual, responsif, dan berkeadilan. Penting untuk melakukan pembaruan regulasi guna memastikan hukum benar-benar menjadi instrumen perlindungan, bukan sekadar legitimasi bagi ketimpangan sosial.

INTRODUCTION

Polygamy is one of the central issues in Islamic family law that continues to be debated in contemporary Islamic legal discourse.¹ This practice is not only related to the legitimacy of religious texts, but also touches on the dimensions of justice, ethics, and gender relations in family life.² In modern Muslim societies, polygamy is often positioned at the intersection between classical fiqh traditions and the demands of

¹ Muhammad Husni Abdulah Pakarti et al., "The Role of Family Law in Confronting Polygamy Practices in Contemporary Society," *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 2 (2023): 132–140, <https://doi.org/10.32332/syakhshiyah.v3i2.7614>.

² Mansari, Zahrul Fatahillah, and Siti Sahara, "Pengesampingan Syarat Alternatif Poligami Sebagai Dasar Mengabulkan Permohonan," *Jurnal Yudisial* 16, no. 3 (2023): 361–379, <https://doi.org/10.29123/jy.v16i3.659>.

substantive justice values that have developed alongside social change.³ This debate shows that polygamy can no longer be understood solely as a normative permissibility, but rather as a legal issue that requires critical and contextual re-examination. This condition makes polygamy relevant to be studied within the framework of contemporary Islamic law.

Islamic law essentially establishes the principles of justice and benefit as the main foundations for regulating marriage.⁴ The permissibility of polygamy in the main sources of Islamic law, such as the Qur'an and hadith, is not absolute, but is accompanied by strict moral and social prerequisites.⁵ However, in social practice and positive legal construction in various Muslim countries, including Indonesia, this permissibility is often understood in a legalistic and textual manner.⁶ Such an understanding has the potential to ignore the ethical dimensions and broader objectives of Sharia law. It is this tension between ideal norms and social reality that underlies the importance of normative and contextual studies of polygamy.⁷

Contemporary developments in Islamic law show a strong tendency to prioritize the *maqashid al-syariah* approach in assessing the validity and relevance of a legal provision. This approach places the protection of life, honor, property, and family integrity as the main objectives of sharia. In the context of polygamy, *maqashid al-syariah* serves as an evaluative instrument to assess whether the practice truly brings about justice or instead gives rise to structural injustice.⁸ Therefore, analysis of polygamy cannot be separated from an assessment of its impact on the dignity and rights of women. This approach opens up space for a reinterpretation of Islamic law that is more responsive to social dynamics.

³ Tedi Sumaelan, "Redefining Tradition: The Impact of Modernization on Polygamous Practices Among Muslims," *QANUN: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 105–18, <https://doi.org/10.62870/qanun.v2i2.25957>.

⁴ Redwan Yasin et al., "Guardian's Responsibility for the Welfare of Children in Marriage," *Malaysian Journal of Syariah and Law* 12, no. 3 (2024): 778–89, <https://doi.org/10.33102/mjsl.vol12no3.765>.

⁵ Abubaker Chiagozie and Akpofure, "An Analysis of Islamic Law on Polygamy Without Court Permission: Legal, Ethical, and Social Perspectives," *SYARIAT: Akhwal Syaksyah Jinayah Siyasa and Muamalah* 1, no. 3 (2024): 156–64, <https://doi.org/10.35335/wh2zd103>.

⁶ Tedi Sumaelan, "Redefining Tradition: The Impact of Modernization on Polygamous Practices Among Muslims," *QANUN: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 105–18, <https://doi.org/10.62870/qanun.v2i2.25957>.

⁷ Wely Dozan, "Fakta Poligami Sebagai Bentuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir Dan Isu Gender," *An-Nisa* 13, no. 1 (2020): 739–749, <https://doi.org/10.30863/an.v13i1.3978>.

⁸ Ilyas Daud, "The Meaning of Justice in the Qur'an and the Implications of Islamic Law on Polygamy Permits: Harmonization of Islamic Law and Positive Law with the Maqasidi Tafsir Approach," *Al-Quds: Jurnal Studi Alquran Dan Hadis* 9, no. 1 (2025): 1–16, <https://doi.org/10.29240/alquds.v9i1.11356>.

In line with the need for literacy on polygamy through the lens of sharia objectives and the ever-changing social reality, the thoughts of contemporary legal experts are important to present. It is in this context that Nasr Hamid Abu Zaid's ideas find their relevance. Nasr Hamid Abu Zaid is a modern Islamic legal thinker who seriously examines the dynamic relationship between revelatory texts, social contexts, and the ethical orientation of Sharia, thereby offering a more critical and responsive framework for reading issues of justice, including the issue of polygamy. Nasr Hamid Abu Zaid is also one of the contemporary Islamic legal thinkers who pays serious attention to the relationship between text, context, and the objectives of Sharia. In his view, the permissibility of polygamy must be understood as a very limited social dispensation, not as an ideal norm in family life.⁹ Nasr emphasizes that the conditions for justice in polygamy are substantive and almost impossible to fulfill perfectly. Thus, polygamy that ignores the principle of justice is actually contrary to the basic spirit of Islamic law. This thinking marks an important shift from a textual approach to an ethical and contextual approach in Islamic law.

This study is designed to analyze polygamy from the perspective of contemporary Islamic law through a normative and contextual study of Nasr Hamid Abu Zaid's thinking. The main focus of the study is to explore Nasr's thinking on the relationship between normative texts, *maqashid al-syariah*, and social reality in the issue of polygamy. A normative analysis is conducted to examine the philosophical and juridical foundations of his thinking, while a contextual approach is used to examine its relevance to the dynamics of modern Muslim family law. With this approach, the study seeks to present a more comprehensive and balanced understanding of the permissibility of polygamy.

The state of the art of this research lies in its attempt to place Nasr Hamid Abu Zaid's thoughts as the main analytical framework in the study of polygamy. Until now, research on polygamy has generally focused on comparisons of classical schools of thought or juridical analysis of positive law, such as the studies reviewed by Puspitasari et al. (2023);¹⁰ Septiandani et al. (2023);¹¹ Munawaroh and Arini (2025).¹² Studies that specifically integrate the *maqashid al-syariah* approach of Nasr with

⁹ Abdul Mufid et al., "Rereading Nasr Hamid Abu Zayd's Method of Interpreting Religious Texts," *HTS Teologiese Studies/Theological Studies* 79, no. 1 (2023): 2–6, <https://doi.org/10.4102/hts.v79i1.8102>.

¹⁰ Heppy Hyma Puspitasari, Alif Maulana, and Febi Agustina, "Poligami Dalam Hukum Islam Dan Hukum Perkawinan," *Journal of Education Research* 4, no. 4 (2023): 2517–2524, <https://doi.org/10.37985/jer.v4i4.669>.

¹¹ Dian Septiandani, Ani Triwati, and Efi Yulistyowati, "Kemaslahatan Dalam Perkawinan Poligami Dalam Kajian Hukum Islam Dan Hukum Positif Indonesia," *Jurnal Ius Constituendum* 8, no. 3 (2023): 466–81, <https://doi.org/10.26623/jic.v8i3.7236>.

¹² Lathifah Munawaroh and Putri Arini, "Poligami Dalam Sistem Perundang-Undangan Hukum Keluarga: Studi Komparasi di Indonesia Dan Turki," *Maqasid Jurnal Studi Hukum Islam* 14, no. 3 (2025): 76–92, <https://doi.org/10.30651/mqsd.v14i3.27505>.

normative and contextual analysis, as discussed in , are still relatively limited. The findings of this research are expected to contribute academically to enriching the discourse on contemporary Islamic law, particularly in formulating a more ethical, just, and relevant understanding of polygamy that is relevant to the challenges of the times. in formulating a more ethical, just, and relevant understanding of polygamy in the face of contemporary challenges.

RESEARCH METHOD

This type of research is a normative legal study¹³ that aims to analyze and interpret the meaning of legal texts on polygamy from the perspective of Nasr Hamid Abu Zaid's thinking. This study uses a qualitative approach with a focus on written legal norms, Islamic legal theory, and *maqashid al-syariah* as a basis for understanding the possibility of reconstructing polygamy regulations. The data sources were obtained through literature studies and documentation, including scientific literature in the form of books by Nasr Hamid Abu Zaid, contemporary Islamic family law books, and academic journals discussing polygamy and gender justice. The legal documents used include Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and relevant sources of Islamic law as a normative basis.

The legal materials in this study consist of primary, secondary, and tertiary legal materials.¹⁴ Primary legal materials include laws and regulations related to marriage and polygamy as well as relevant sources of Islamic law, while secondary legal materials include books, journals, and scientific works that examine the thoughts of Nasr Hamid Abu Zaid and contemporary Islamic law. Tertiary legal materials in the form of legal dictionaries and encyclopedias are used to clarify legal concepts and terminology. Data analysis is carried out qualitatively through critical reading and normative-contextual interpretation, then presented in a systematic and coherent descriptive narrative.

RESULTS AND DISCUSSION

The Construction of the Meaning of Polygamy in the Framework of *Maqashid Sharia*

Nasr Hamid Abu Zaid's construction of thought regarding polygamy departs from his criticism of the legal-formal approach in the interpretation of Islamic law, which is often literal and ahistorical. Within the framework of *maqashid al-syariah*, he emphasizes that Islamic law aims to protect basic human rights, including justice and the dignity of women. Legal understanding should not be confined to normative texts, but must also consider the ever-evolving social reality. Nasr argues that it is necessary to reinterpret the law of polygamy based on the principle of substantive justice, not

¹³ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2013).

¹⁴ Bambang Sunggono, *Metode Penelitian Hukum* (Jakarta: Raja Grafindo, 2016).

merely procedural validity. The value- s of *maqashid* become the ethical basis for testing the relevance and validity of a rule.

Nasr's thinking is inspired by classical *maqashid* such as al-Syatibi, but he develops it into a contemporary context that emphasizes social justice. Nasr sees that polygamy practices that do not fulfill the elements of justice should not be given legal legitimacy, even if the text states that it is permissible.¹⁵ This perspective expands the dimension of law from being normative to being responsive to the objective conditions of society. The principle of *maslahah*, which is at the core of *maqashid*, is translated into the protection of women and children. In Nasr's view, law is not merely a product of text but the result of a dynamic social construction.

The data obtained shows that many polygamous practices in Indonesia do not comply with applicable laws, both administratively and substantively. Articles 4 to 9 of Law Number 1 of 1974 and Government Regulation Number 9 of 1975 stipulate strict requirements for a husband who wishes to practice polygamy. These requirements include permission from the first wife, financial capability, and permission from the religious court¹⁶. However, implementation in the field is not entirely consistent with these norms, as many polygamous practices are carried out secretly without a valid legal process.

From the perspective of *maqashid al-syariah*, this weak implementation reflects the failure of the law to achieve the basic objectives of sharia, particularly the protection of honor, justice, and family welfare.¹⁷ The practice of polygamy carried out secretly without court permission and without the consent of the first wife has the potential to cause harm that is contrary to the principles of *hifz al-nasl*, *hifz al-'ird*, and *hifz al-nafs*.¹⁸ Within the framework of Nasr Hamid Abu Zaid's thinking, the regulation of polygamy should not only be assessed in terms of procedural compliance, but also in terms of its ability to guarantee substantive justice. Thus, the Marriage Law, KHI, and Government Regulation (PP) Number 9 of 1975 need to be read critically and contextually so that their application is in line with the objectives of sharia and does not become a normative legitimization for polygamy practices that harm women.

¹⁵ Jonwari and Faiz Zainuddin, "Konsep Tafsir Dan Takwil Dalam Perspektif As-Syatibi," *Lisan Al-Hal: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 14, no. 2 (2020): 399–428, <https://doi.org/10.35316/lisanalhal.v14i2.791>.

¹⁶ Salman Abdul Muthalib, "Pengesahan Isbat Nikah Perkawinan Poligami: Kajian Putusan Nomor 130/Pdt.G/2020/Ms.Bna," *El-Ussrah: Jurnal Hukum Keluarga* 5, no. 2 (2023): 224–38, <https://doi.org/10.22373/ujhk.v5i2.16040>.

¹⁷ Firman Arifandi and Irwandi M. Zein, "Menelaah Perpektif Maqashid Ibnu Asyur Dalam Ragam Hukum Poligami," *Ranah Research: Journal Of Multidisciplinary Research and Development* 7, no. 5 (2025): 3585–3593, <https://doi.org/10.38035/rrj.v7i5.1669>.

¹⁸ Muhammad Jazil Rifqi et al., "Children's Legal Identity at Stake: Reconstructing Maqasid Al-Syari'ah Through Marriage Isbat Applications by the Second Generation in Pasuruan," *EL-Mashlahah* 15, no. 1 (2025): 125–48, <https://doi.org/10.23971/el-mashlahah.v15i1.9068>.

The discrepancy between norms and practices shows a gap between theory and reality in the field. This reality shows that the legal system is not strong enough to enforce protection for vulnerable parties. Legal interpretations tend to ignore the *maqashid* aspect and are more oriented towards a rigid textual reading. Nasr argues that Islamic law must be able to adapt to social changes and uphold the principle of substantive justice. In this context, *maqashid* is not only a legal approach, but also a moral principle in assessing the validity of a policy.

In the context of regulation, polygamy is also regulated in the Compilation of Islamic Law (KHI), which clarifies the requirements and procedures for applying for a polygamy permit. Articles 56 and 57 of the KHI emphasize the need for consideration of justice in the practice of polygamy. However, these regulations do not yet address the substance of the protection of women's rights in a comprehensive manner. The KHI is still stuck on formal aspects without touching on the dimension of *maqashid* in depth. This approach contradicts Nasr's line of thinking, which encourages a shift from legal formalities to the substance of justice.

An analysis of Nasr's thinking shows that Islamic law must continue to be reinterpreted within the framework of *maqashid*. The legality of polygamy cannot be separated from the principles of justice, responsibility, and benefit.¹⁹ The law should not legitimize practices that harm one party, even if they are justified by the text. This perspective is in line with the opinion of Jasser Auda, who also encourages a contextual and multidimensional reading of Islamic law. Both thinkers agree that *maqashid al-syariah* is an instrument for responding to social challenges and avoiding the misuse of legal texts.²⁰

Field data shows that religious courts, as institutions that grant permission for polygamy, often lack evaluation standards that refer to *maqashid*.²¹ The licensing process is still based on administrative documents, not substantive justice. Many decisions ignore the potential psychological and social harm to the first wife. This shows that the legal system has not internalized the principle of *maqashid* in its considerations.²² Nasr proposes that the law should pay more attention to values and ethics rather than just procedures.

¹⁹ Maulida Khasanah, Moh. Nor Ichwan, and Muhammad Yusuf Pratama, "Challenging Gender Inequality Through Qur'anic Reinterpretation: The Hermeneutics of Nasr Hamid Abu Zaid," *Indonesian Journal of Islamic Literature and Muslim Society* 10, no. 1 (2025): 17–38, <https://doi.org/10.22515/islimus.v10i1.12045>.

²⁰ Jasser Auda, "Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach," *Journal of Islamic Studies* 34, no. 4 (2022): 411–32.

²¹ Chiagozie and Akpofure, "An Analysis of Islamic Law on Polygamy Without Court Permission: Legal, Ethical, and Social Perspectives."

²² Deris Arista Saputra, "Maqashid Syari'ah Analysis Of Pregnant Women's Marriage: A Review Of Individual And Community Welfare," *Journal of Social Science (JoSS)* 2, no. 10 (2023): 875–87, <https://doi.org/10.57185/joss.v2i10.142>.

In the legal construct developed by Nasr Hamid Abu Zaid, *maqashid* is positioned as an evaluative tool for legal texts and contexts. Polygamy is only considered valid if it meets strict moral and social requirements, not just administrative formalities.²³ This perspective gives new meaning to the authority of Islamic law, which has been viewed as final and unchallengeable. Nasr sees that reinterpreting Islamic law is a necessity in responding to the dynamics of society. This is a form of contextual and responsible *ijtihad*. Nasr's approach differs from the conservative view that sees Islamic law as a fixed text that cannot be reinterpreted. Nasr emphasizes the importance of a critical reading of the history of legal interpretation and sees polygamy as part of the patriarchal legacy. In his view, *maqashid* serves to deconstruct this legacy and replace it with a more equitable legal system. The law should not be an instrument of oppression hidden behind arguments.

Several other scholars, such as Muhammad Abduh and Yusuf Qardhawi, also emphasize the importance of justice in polygamy, although not as progressively as Nasr.²⁴ Both still recognize the permissibility of polygamy under certain conditions, but prioritize moral responsibility as the main requirement. Their views can be considered a middle ground between legalistic and progressive. Nasr's thinking emphasizes the rejection of polygamy that is not in accordance with *maqashid*. This shows a shift in Islamic legal thinking towards a more responsive and ethical direction.

The interpretation of Islamic law in Indonesia has not yet fully accommodated *maqashid* as an instrument for policy assessment. Religious courts still prioritize administrative evidence without assessing the dimension of justice in depth. Existing regulations also do not accommodate the vulnerability of women in polygamous households. The legal system does not provide an evaluative mechanism after a polygamy permit is issued. This mechanism is important to uphold the principle of justice throughout the practice.

The legal changes needed at this time include the integration of *maqashid* values into the regulatory system and judicial practice. The law needs to be revised so that it not only mentions administrative requirements, but also mentions ethical evaluations based on *maqashid*.²⁵ The courts need to be equipped with *maqashid* guidelines in reviewing polygamy applications. Revisions are also needed to the KHI to include indicators of substantive justice. These efforts are important so that the law can respond to the needs of a dynamic and complex modern society.

²³ Miloud Lifa, "Characteristics of The Modern Utilization of Maqasid Al-Sharia (Objectives of Sharia)," *Journal of Science and Knowledge Horizons* 4, no. 2 (2024): 48–69, <https://doi.org/10.34118/jskp.v4i02.4008>.

²⁴ Ahmad Anas, "Yusuf Al-Qardhawi's Hermeneutics: An Alternative Moderate Reading of Qur'an," *An-Nur International Journal of the Quran & Hadith* 2, no. 2 (2024): 34–44, <https://doi.org/10.62032/aijgh.v2i2.49>.

²⁵ Nur, "Contextualization of Polygamy Law: Justification of Islamic Legal Principles against Positive Regulations in Indonesia."

The legal provisions on polygamy contained in Government Regulation No. 9 of 1975 also do not address the substance of justice.²⁶ The regulation emphasizes administrative procedures and does not regulate in detail the form of protection for wives and children. In practice, women are still often in a weak position when their husbands practice polygamy. This regulation is not sufficient to ensure that women's basic rights in marriage are fulfilled. This regulation needs to be revised to be in line with *maqashid*.

Nasr's thinking provides an understanding that *maqashid* must be the basis of legal legitimacy, not merely a supplement. In the context of polygamy, *maqashid* becomes the benchmark for determining whether the practice is valid or not.²⁷ The aspects of justice, protection of life, and maintenance of the family are the main essences that must be prioritized. This view rejects legalism that ignores the social and moral impacts of an action. This reinterpretation is important to promote a more humane and just law.

This study also reveals that the provisions in the Marriage Law do not yet have objective indicators to assess fairness in polygamy. The absence of these indicators causes judges' decisions to be subjective and lack clear benchmarks. This contradicts the principle of *maqashid*, which requires standardization in assessing *maslahat*. Legal provisions need to be supplemented with clear ethical and social parameters. This assessment mechanism will strengthen the integrity of the family law system.

Rapid social changes in Indonesian society require adaptive and proactive laws. The phenomena of urbanization, modernization, and changing gender roles affect household dynamics. Rigid laws are no longer relevant in dealing with these changes. Nasr's thinking is important as a basis for reforming the legal system to be more sensitive to change. The principle of *maqashid* must be revived as the spirit of every legal policy. This study shows that Nasr Hamid Abu Zaid's thinking on polygamy is not only relevant in theory but also applicable in the reform of Islamic family law. The reinterpretation of *maqashid* can be the foundation for building a legal system that is more just, responsive, and protective of vulnerable groups. Legal reform cannot be achieved without the courage to break free from literalistic boundaries. A living law is one that is capable of changing with the times. This principle is at the heart of the concepts of *maqashid* and contemporary *ijtihad*.

²⁶ Nihrul Bahi Alhaidar, Muhammad Muhajir, and Syamsud Dhuha, "The Closure of Isbat for Polygamous Marriage on Legal Purpose Perspective," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 13, no. 1 (2023): 1–26, <https://doi.org/10.15642/alhukama.2023.13.1.1-26>.

²⁷ Muhammad Fadhil Wathani et al., "The Concept of Mafhum Al-Nash in the Thought of Nasr Hamid Abu Zaid: A Comparative Analysis with the Literal Approach of Khawarij," *HERMENEUTIK: Jurnal Ilmu Al-Qur'an Dan Tafsir* 19, no. 2 (2026): 414–33, <https://doi.org/10.21043/hermeneutik.v19i2.34385>.

Reconstruction of Polygamy Regulations in Indonesia and Their Relevance to the Thoughts of Nasr Hamid Abu Zaid

The discrepancy between legal norms and the practice of polygamy in Indonesia is a complex issue involving normative, structural, and cultural aspects. Legal norms are regulated in various legislative instruments such as Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), and Government Regulation No. 9 of 1975. These three regulations normatively restrict the practice of polygamy with a number of administrative and substantive requirements. Polygamy is only permitted under certain circumstances, with court permission and the prior consent of the wife. Positive law creates legal barriers to prevent the abuse of polygamy.

Findings in the field show that polygamy is still often practiced without going through the legal procedures as stipulated by law.²⁸ Many husbands remarry secretly without court permission and without the consent of their legal wives. This practice occurs in both rural and urban areas for subjective reasons and narrow religious justifications. This discrepancy reflects the weak supervision and control of the state over the implementation of family law. The judicial system has also been unable to reach informal practices that are not legally registered.

Legal norms provide a binding framework that embodies the goal of justice in the institution of marriage. The law is not only textual, but also an ideal that regulates how society should implement the provisions of polygamy.²⁹ The purpose of this law reflects the values of *maqashid al-syariah*, such as justice, protection, and the welfare of the family. Legal norms emphasize the fulfillment of the husband's responsibilities and protection towards his wife and children.³⁰ In reality, these values are often ignored.

Empirical data shows that the majority of polygamy practices in Indonesia do not go through official legal channels. Many of them rely on unregistered marriages or exploit administrative loopholes. Several studies show that religious courts often grant permission without a thorough evaluation of the aspects of justice and the psychological readiness of the wife. This has led to a crisis of confidence in the religious court system's ability to protect women's rights. Uncontrolled polygamy increases the potential for rights violations and domestic violence.

Judicial practices in religious courts show a strong tendency for polygamy permits to be granted based on the fulfillment of formal administrative requirements rather than substantive assessments of fairness. A number of studies of religious court decisions, such as those at the Suwawa Religious Court and the Malang District

²⁸ Salsabila Haura YUSDIKA, "Analisis Prespektif Hukum Terhadap Permohonan Pengesahan Nikah Poligami Sirri," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 2, no. 2 (2024): 24–34, <https://doi.org/10.51903/hakim.v2i2.1714>.

²⁹ Muhammad Saleh Ridwan, Wahidah Abdullah, and Idham, "Public Perception of Polygamy in Makassar, Indonesia: Cultural Perspective and Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 20–38, <https://doi.org/10.22373/sjhk.v8i1.15419>.

³⁰ Saiful Millah and Asep Saepudin Jahar, *Dualisme Hukum Perkawinan Islam Di Indonesia: Fiqh Dan KHI* (Jakarta: Amzah, 2021).

Religious Court,³¹ show that the majority of requests for polygamy permits are granted as long as there is the consent of the first wife and evidence of the husband's financial ability. In many rulings, the wife's consent is treated as a final legal fact without in-depth examination of psychological pressure, power relations, or economic dependence that may influence the wife's free will. A similar pattern is also seen in several other decisions, including cases in the Samarinda and Muara Bulian Religious Courts, where the judges' considerations emphasized procedural compliance with the Marriage Law and the Compilation of Islamic Law rather than a comprehensive evaluation of the impact of polygamy on justice and family integrity.

This judicial tendency reinforces empirical findings that legal oversight of polygamy is not yet fully oriented towards protecting women's rights. From the perspective of *maqashid al-syariah*, judicial practices that treat justice as an administrative formality have the potential to neglect the objectives of sharia, particularly the protection of the honor, dignity, and welfare of the family. Nasr Hamid Abu Zaid's thinking provides a relevant normative critique of this pattern by emphasizing that the permissibility of polygamy must be tested through substantive justice, not merely procedural legality. When religious courts fail to conduct ethical and contextual assessments, the law risks becoming a tool for legitimizing polygamy practices that are detrimental to women, while also weakening public trust in the role of religious courts as guardians of justice in Islamic family law.

Analysis of the above reality shows that patriarchal social structures and literal interpretations of religion reinforce non-procedural polygamy practices.³² Many people still consider polygamy to be an absolute right of the husband that is guaranteed by religion.³³ This social construct is not in accordance with the values of *maqashid*, which place justice as the main principle in Islamic family law. Legal norms oriented towards protection are often overridden by traditions and cultures that favor men.³⁴

The provisions in Article 4 paragraph (2) of the Marriage Law state that a husband must meet certain requirements, including permission from the court. However, these requirements are not accompanied by objective parameters to assess

³¹ Rahmawaty M. Sulaiman and Nova Effenty Muhammad, "Penalaran Hukum Atas Putusan Izin Poligami Di Pengadilan Agama Suwawa Perspektif Feminist Legal Theory," *As-Syams* 6, no. 1 (2025): 74–96, <https://ejournal.iaingorontalo.ac.id/index.php/AS-SYAMS/article/view/2025-02-01>.

³² Hamka Hasan et al., "Polygamy: Uncovering the Effect of Patriarchal Ideology on Gender-Biased Interpretation," *HTS Teologiese Studies/Theological Studies* 78, no. 4 (2022): 2–9, <https://doi.org/10.4102/hts.v78i4.7970>.

³³ Dozan, "Fakta Poligami Sebagai Bentuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir Dan Isu Gender."

³⁴ Nasaiy Aziz, Rispalman, and Tika Anggraini, "Polygamy in the Perspective of Tafsir Al-Aḥkām and Islamic Law: An Examination of the Gayo Luwes Community in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1682–1707, <https://doi.org/10.22373/sjkh.v7i3.20021>.

whether justice will truly be achieved. Article 57 of the KHI states that polygamy is only permissible if the wife is unable to fulfill her obligations. This phrase is subjective and opens up broad room for interpretation by judges. Legal provisions such as this are weak in their implementation because they are not accompanied by operational technical guidelines.

Government Regulation No. 9 of 1975 Article 41 explains the court's permission for a husband to have more than one wife. This regulation is more administrative in nature without considering the substantial aspects of polygamous marriage itself. The absence of strict sanctions against perpetrators of illegal polygamy is also a factor in the weak effectiveness of the law. Many perpetrators of polygamy do not face clear legal consequences even though they violate the procedure. This reinforces the gap between norms and reality.

Normative legal theory explains that the law must guide society toward an ideal order through rational and fair rules (Febriani, 2025). However, when the law is not obeyed, there is a deviation between norms and practice. Hans Kelsen states that the law must be universally binding at the appropriate level.³⁵ However, when reality does not reflect these norms, the law loses its reconstructive function. This inconsistency has led to criticism of the applicability of law in a pluralistic society.

The concept of *maqashid al-syariah* developed by al-Syatibi and modern figures such as Jasser Auda and Nasr Abdul Hamid emphasizes that Islamic law must be oriented towards real benefits.³⁶ The validity of the law must be tested based on its results in terms of social justice and the protection of human rights. In the context of polygamy, *maqashid* must be the basis for assessing whether a practice is appropriate or not. This perspective rejects the use of legal arguments that do not consider their social consequences. Thus, the law does not only apply in the realm of doctrine, but also in reality.

A rigid and non-contextual interpretation of Islamic law contributes to the weak application of norms in social practice.³⁷ Nasr Hamid Abu Zaid proposes a reinterpretation of Islamic law through a *maqashid* approach that places justice as the main axis. Polygamy is only valid if it does not cause harm to any party in the marriage. According to him, Islamic law is not literal law, but a system of values that lives within society. Stagnant law will fail to address ever-changing issues.

³⁵ Afrinald Rizhan, "Konsep Hukum Dan Ide Keadilan Berdasarkan Teori Hukum Statis (Nomostatics) Hans Kelsen," *Kodifikasi* 2, no. 1 (2020): 61–71, https://ejournal.uniks.ac.id/index.php/KODIFIKASI/article/view/679?utm_source.

³⁶ Nasruddin Yusuf et al., "Examining the Basis of Maqashid Sharia in Renewal of Islamic Law in Indonesia," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (2024): 357, <https://doi.org/10.22373/petita.v9i1.258>.

³⁷ Mamluatur Rahmah, "The Double Movement Method from The Perspective of Fazlur Rahman (A Study of Misogynistic Hadiths and Their Implications)," *SETARA: Journal of Gender and Children Studies* 7, no. 1 (2025): 99–123.

Society is undergoing rapid social transformation in the areas of economics, technology, and gender relations. Legal provisions that are unresponsive to these changes will be left behind and lose legitimacy.³⁸ The practice of polygamy that does not conform to norms is a reflection of the failure of the law to respond to social dynamics. Legal reforms must be carried out with consideration of social, cultural, and psychological factors. Legal provisions need to be revised to be in line with the demands of modern society.

Family law cannot be viewed merely as a private contract, but rather as a public institution that affects social stability. The state has a strategic role in ensuring that religious practices do not harm vulnerable groups.³⁹ The discrepancy between norms and practices will continue if the law does not structurally adopt the principle of *maqashid*. The law must transform from procedural law to justice law. This is the moral and constitutional duty of a state based on the rule of law.

Family law reform requires renewal at the juridical and sociological levels. There needs to be harmonization between the Marriage Law, KHI, and other implementing regulations with the principle of *maqashid*. The revision needs to include substantive evaluation indicators of the social and psychological impacts of polygamy. The monitoring mechanism must also be strengthened so that the polygamy permit process does not become a mere formality. These changes are a necessity in realizing an inclusive and fair legal system.

These findings confirm that legal norms that are not based on *maqashid* are difficult to practice consistently in a pluralistic society. When the law is not contextual and applicable, people will look for loopholes to avoid it. Family law reform is a long-term project that requires a paradigm shift in law, not just amendments to articles. A normative legal approach oriented towards *maqashid* can be a solution to the crisis of legal legitimacy in the practice of polygamy. This affirmation is important as a direction for legal reform amid the ongoing changes in society.

CONCLUSION

Nasr Hamid Abu Zaid's thinking on polygamy emphasizes the importance of reinterpreting Islamic law within the framework of *maqashid al-syariah*, placing justice, benefit, and protection of vulnerable groups at the core of the law. He criticizes a rigid legalistic approach and encourages a reading that is responsive to social realities, in which the law does not merely rely on normative texts but must also uphold ethical and humanitarian values. Polygamous practices that do not fulfill the element of

³⁸ Solihan Makruf et al., "Teori Hukum Dan Filsafat Hukum: Membangun Responsivitas Terhadap Perubahan Ekonomi Dan Sosial," *Al-Muamalat: Jurnal Hukum Dan Ekonomi Syariah* 10, no. 1 (2025): 94–112, <https://doi.org/10.32505/muamalat.v10i1.9614>.

³⁹ Andri Irama Daulay and Fahmi Hakim, "Kesetaraan Gender Dalam Hukum Perkawinan Islam: Antara Idealitas Normatif Dan Realitas Sosial," *Journal of Dual Legal Systems* 2, no. 1 (2025): 14–24, <https://doi.org/10.58824/jdls.v2i1.286>.

justice, even if they are formally valid, should not be legitimized because they contradict the objectives of sharia. An analysis of regulations in Indonesia shows that there is still a lack of adequate integration of *maqashid*, both in legislation and judicial practice, so that women's rights are often neglected in the practice of polygamy. Nasr's perspective provides a new direction for the reform of Islamic family law to be more contextual, fair, and in line with the development of modern society.

The reconstruction of polygamy regulations in Indonesia faces serious challenges due to the incompatibility between legal norms and ongoing social practices, mainly because of the weak application of the principle of substantive justice and the dominance of patriarchal structures in religious interpretation. Existing legal provisions have not been able to address the moral, psychological, and social aspects of polygamy, so that the law often only functions administratively without adequate oversight. Nasr Hamid Abu Zaid's view provides a critical framework by emphasizing *maqashid al-syariah* as the basis for assessing the validity of polygamy, demanding justice as the main requirement, not just procedural validity. Regulations that do not consider *maqashid* will fail to protect women and uphold the noble goals of Islamic law. Reforming family law is imperative in order to respond to social dynamics with a more ethical, responsive, and just approach. It is important to conduct further empirical research on religious court decisions related to polygamy permits to assess the extent to which the principle of *maqashid al-syariah*, particularly substantive justice, is truly used as a basis for judges' considerations. This study is important to ensure that the legality of polygamy does not stop at the fulfillment of administrative requirements, but truly reflects the protection of women's rights and dignity as the main objective of sharia.

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