

Original Article

Criminalization of Polygamy Without Wife's Consent from the Perspective of the New Criminal Code (Law No. 1 of 2023) and Maqashid Sharia

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Abstract:

This study analyzes the legal implications of polygamy, which are considered criminal acts, for those who practice polygamy without the permission of the legal wife or a court ruling, based on Law No. 1 of 2023 (the New Criminal Code), and a critical review based on the Maqashid Syariah analysis. In 2026, the implementation of the New Criminal Code affirms the legal position of polygamous marriages carried out in violation of existing procedures and without the permission of the legal wife, as determined by a Religious Court Decree. The research method used is a juridical-normative legal research method with a statutory and conceptual analysis approach. The results of the study indicate that Articles 402 and 403 of the New Criminal Code prohibit polygamy without the permission of the legal wife and Marriage without a court ruling is categorized as a criminal offense with a maximum penalty of six years' imprisonment or a Category IV fine. From a sociological and juridical perspective, this legal provision constitutes a complaint offense aimed at protecting the rights of the first wife. From the perspective of Maqashid Syariah (Islamic Law), the application of this criminal sanction is seen as aligned with the principle of public welfare (mashlahah), particularly in safeguarding offspring (hifzhun nasl) to ensure the legal status of children, and safeguarding property (hifzhul maal) related to inheritance rights and maintenance. Criminal sanctions serve as a legal instrument to prevent harm neglect and ensure that the principle of justice, an absolute requirement for polygamy in Islam, is fulfilled both administratively and substantively in a marriage.

Keywords: Unlicensed Polygamy, Law No. 1 of 2023, New Criminal Code, Maqashid Syariah, Criminal Sanctions.

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Introduction

Marriage is a sacred event in the course of human life in forming a family. It is established based on the natural elements of human existence, including biological needs, procreation and continuation of lineage, as well as fundamental human needs such as love, care, companionship, and the nurturing and education of children to become responsible members of society. According to Islamic law, marriage is a physical and spiritual bond between a man and a woman to live together in a household and to produce offspring, carried out in accordance with the provisions of Islamic sharia ([Asrori, 2015](#)).

In the Indonesian legal system, particularly in marriage law and the Compilation of Islamic Law (KHI), marriage is not merely a strong spiritual bond (*mitsaqan ghalizha*) between two individuals, but also a legal event that carries broad legal implications for the rights and obligations of citizens. Along with the full implementation of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), which came into force in early 2026, the paradigm of law enforcement regarding violations of marital norms—especially polygamy without the consent of the lawful wife and court authorization—has undergone significant legal transformation ([Indonesia, 2023](#)).

Although polygamous marriage is explicitly and theologically recognized as lawful in Islamic law under strict conditions of justice, in practice it is often misused by certain individuals through unregistered marriages (*nikah siri*), data manipulation, or misrepresentation of marital status in order to avoid obtaining the consent of the lawful wife and court approval ([Munir, 2024](#)). Such actions not only violate the sacred marital commitment of *mitsaqan ghalizha* but also create serious legal consequences for the first wife and children.

From the perspective of positive law, Articles 402 and 403 of the New Criminal Code (Law No. 1 of 2023) clearly classify illegal polygamy as a criminal offense punishable by imprisonment of up to six years ([Kemenkumham RI, 2025](#)). The enforcement of these criminal sanctions represents state intervention against unlawful polygamous practices and serves to ensure that family welfare, as well as the rights and obligations of wives and children, are protected from arbitrary actions.

From the perspective of Maqashid Sharia, the urgency of criminal sanctions imposed by the state is aligned with the protection of the five essential objectives of life (*al-dharuriyyat al-khamsah*). Polygamy conducted without the wife's consent and court authorization often results in neglect of financial support and property rights (*hifz al-mal*), uncertainty regarding lineage and children's civil rights (*hifz al-nasl*), and psychological trauma that affects the mental well-being of wives (*hifz al-nafs*) ([Auda, 2022](#)). Islam emphasizes that the primary objective of sharia is to establish justice and prevent harm (*dar' al-mafasid*). Therefore, harmonizing the provisions of the New Criminal Code with the values of Maqashid Sharia is crucial.

The criminal sanctions imposed by the state are not merely physical punishments but function as instruments of *ta'zir* to uphold substantive justice and prevent illegal polygamy from becoming a means of oppression within the family ([Syahrur, 2004](#)). This analysis is highly relevant in maintaining a balance between individual human rights and compliance with state regulations in order to achieve a just and orderly social system.

Methods

This study employs a normative legal research method, which doctrinally examines and analyzes law as a coherent system of norms, encompassing legal principles, statutory rules, and legal doctrines relevant to the issue of illegal polygamy ([Soerjono & Mamudji, 2010](#)). In analyzing criminal sanctions under Law No. 1 of 2023, this research applies a statute approach to examine the ratio legis and the binding force of Article 402 of the New Criminal Code, which came into effect in early 2026 ([Marzuki, 2017](#)).

In order to provide a moral and theological dimension, this study also adopts a conceptual approach that refers to the principles of Maqashid Sharia as an analytical framework to assess the level of public benefit (maslahah) generated by these criminal sanctions in protecting the rights of women and children. The primary legal sources used in this study are the Criminal Code (Law No. 1 of 2023) and Law No. 1 of 1974 on Marriage, supported by secondary legal sources in the form of literature from experts in family law and contemporary ushul fiqh ([Ibrahim, 2006](#)).

Data collection for legal analysis was conducted through intensive library research. The collected data were then processed using a descriptive-qualitative analysis method ([Ali, 2021](#)). This analytical process aims to harmonize punitive positive legal norms with the fundamental objectives of Islamic law in realizing family justice. As a result, the conclusions drawn are expected to be comprehensive, both from a formal-juridical and a socio-religious perspective ([Kharlie, 2022](#)).

Results

The significant development of Islamic family law in Indonesia reached a crucial point in 2026 with the comprehensive implementation of Law No. 1 of 2023. Historically, regulations on polygamy under Law No. 1 of 1974 on Marriage primarily emphasized administrative and civil sanctions, which in practice were often considered insufficient to create a deterrent effect against illegal polygamy or unregistered marriages (nikah siri) ([Munir, 2024](#)). Provisions regarding the consent of the lawful wife and court authorization were frequently bypassed through legal manipulation to fulfill personal interests.

However, under the perspective of the New Criminal Code (Law No. 1 of 2023), such actions are now regarded as unlawful and even criminal acts that undermine the dignity of marriage as a sacred institution protected by the state ([Indonesia, 2023](#)). This legal transformation is consistent with the principles of Maqashid Sharia, which view law as dynamic and responsive to changes in time, place, and socio-historical contexts in order to achieve public welfare (al-maslahah al-mursalah) ([Auda, 2022](#)).

The imposition of criminal sanctions on individuals who practice polygamy without the consent of the lawful wife and court approval should not be interpreted as a prohibition of polygamy under Islamic law. Rather, it represents state regulation (tanzhim) of its implementation to prevent harm and injustice toward wives and children ([Al-Zuhaili, 2022](#)). In Islamic jurisprudence, it is stated: “Tasharruf al-imam ‘ala al-ra‘iyyah manuthun bi al-maslahah”, meaning that the policies of a leader toward the people must be based on public interest ([Kharlie, 2022](#)).

Accordingly, the state possesses full authority, through the New Criminal Code, to criminalize and penalize manipulative and illegal polygamous practices that result in systemic exploitation of women’s rights and neglect of children ([Syahrur, 2004](#)). This perspective serves as an important foundation before further examining the

criminal elements stipulated in Article 402 of the New Criminal Code and their correlation with the protection of the five essential objectives of Islamic law.

Polygamy from the Perspective of Islamic Law

Polygamy in Islamic law refers to a second and subsequent marriage conducted within a legally valid marital status under sharia, aimed at building a household characterized by *sakinah*, *mawaddah*, and *rahmah*. The encouragement of marriage in Islamic teachings serves, among other purposes, to preserve moral integrity and to obtain lawful offspring ([Puspytasari, Maulana, & Agustina, 2023](#)). In this context, polygamy becomes a central issue that balances legal flexibility (*rukhsah*) with the strict application of substantive justice.

Normatively, the primary foundation of polygamy is derived from Surah An-Nisa verse 3, which states as follows:

وَأَنْ خِفْتُمْ أَلَّا تَقْسِطُوا فِي الْيَسْمَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثَلِيٍّ وَتُحْتِ وَرُبْعٌ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةٌ أَوْ مَا مَلَكَتْ
 أَيْمَانُكُمْ ۖ ذَٰلِكَ أَدْوَىٰ أَلَّا تَعْوِلُوا ۗ ۝ ۳

“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of other women, two, three, or four. But if you fear that you will not be just, then marry only one, or those your right hand possesses. That is more suitable to prevent you from doing injustice.” (Qur’an, Surah An-Nisa: 3)

Based on the explanation of the above verse, polygamy is permitted for a man to marry up to four women, provided that he fulfills the absolute requirement of justice ([Departemen Agama RI, 2011](#)). Justice in this context includes material dimensions such as financial support, housing, and the equitable division of time. Meanwhile, fairness in emotional affection is acknowledged by the Qur’an as something beyond absolute human control ([Qutb, 2023](#)).

According to Ibn Hazm, justice in polygamy must be absolute, precise, and comprehensive, applied equally without imbalance, favoritism, or discrimination in treating wives, whether in the allocation of nights or financial support ([Hidayatulloh, 2015](#)).

The legal status of polygamy in Islamic law varies depending on its objectives, benefits, and potential harms. It is classified into three categories: recommended (*sunnah*), discouraged (*makruh*), and prohibited (*haram*). Polygamy is considered *sunnah* when the husband obtains the consent of the first wife, or when the first wife suffers from illness and is medically diagnosed as unable to bear children, while the husband strongly desires offspring. In such cases, polygamy is deemed recommended because it brings greater public benefit (*maslahah*), provided that the husband is capable of acting justly toward all his wives. This form of polygamy was commonly practiced by the Companions of the Prophet.

Polygamy is regarded as *makruh* when its primary purpose is merely to satisfy biological desires, while the husband doubts his own ability to act justly and fears committing injustice. Polygamy is prohibited (*haram*) when a man lacks economic capacity or the ability to maintain fairness but nevertheless insists on practicing polygamy ([Puspytasari et al., 2023](#)).

Therefore, contemporary Islamic scholars emphasize that polygamy in the Qur'an is not a command (*amr*), but rather an emergency exit opened for social welfare and the improvement of social life, such as protecting orphans or addressing post-war demographic conditions. This option must be exercised with full responsibility ([Syahrur, 2004](#)).

In the discourse of Islamic family law in Indonesia, these sharia principles have been codified in Articles 55–59 of the Compilation of Islamic Law (KHI), which regulate that permission for polygamy may only be granted if certain conditions are met, such as the wife's inability to fulfill marital obligations, physical disability, or inability to bear children ([Indonesia, 1991](#)).

This legal framework aligns with the fiqh principle that “the actions of a leader toward his people must be based on public interest.” In the family context, the husband, as the leader, must ensure that the decision to practice polygamy does not cause harm (*darar*) to the first wife and children, but instead brings benefit and justice to the family.

Islam strongly prohibits polygamy that is motivated solely by biological desire without considering economic welfare and the socio-psychological condition of the family. This is because the primary objective of marriage in Islam is to achieve tranquility (*sakinah*), love (*mawaddah*), and mercy (*rahmah*). Thus, Islamic law views polygamy as a legally permissible institution, yet one bounded by strict ethical and juridical safeguards to protect the dignity and rights of women and children.

Criminalization of Polygamy Without the Consent of the Legal Wife and Court Authorization from the Perspective of the New Criminal Code (Law No. 1 of 2023)

The discourse on the criminalization of polygamy has generated significant controversy in society, particularly in relation to religious values, morality, and legal protection. On the one hand, criminalizing polygamy is viewed as a form of protection for women and children against oppressive practices, neglect of financial support, and inhumane treatment. On the other hand, some segments of society argue that such criminalization contradicts Islamic teachings, which permit polygamy under certain conditions. Furthermore, polygamy is often perceived as an alternative means to address and reduce phenomena such as adultery and prostitution. As a result, polygamy remains a sensitive and contentious issue in Indonesian society.

Therefore, under the Criminal Code (KUHP), polygamy is classified as a criminal offense and may result in criminal sanctions for its perpetrators ([Hayah & Anwar, 2026](#)).

The implementation of Law No. 1 of 2023 concerning the Criminal Code (New KUHP), which will come fully into force in Indonesia in 2026, brings significant legal implications for the practice of illegal polygamy or polygamy conducted without the consent of the legal wife and without court authorization. From the perspective of contemporary positive law, a husband who enters into a second marriage without obtaining the consent of his legal wife and without an official court ruling is classified as committing a serious criminal offense under Article 402 paragraphs (1) and (2).

This provision stipulates a maximum prison sentence of six years for any person who enters into a marriage while knowing that an existing marriage constitutes a legal impediment to the validity of the new marriage ([Indonesia, 2025](#)). Juridically, this criminal sanction serves as a reinforcement of Law No. 1 of 1974 on Marriage,

which requires spousal consent, court authorization, and the husband's financial and moral capacity prior to engaging in polygamy.

Under the former Criminal Code, polygamy without consent and court authorization was regulated in Article 279, which provided a maximum penalty of five years' imprisonment. For instance, in Decision of the Demak District Court Number 183/Pid.B/2025/PN Dmk dated December 2, 2025, the court sentenced the defendant to five months' imprisonment for illegal polygamy ([Mahkamah Agung, 2026](#)). This sanction was considered relatively lenient when compared to the statutory maximum penalty, although it was expected to serve as a warning to potential offenders.

Under the New Criminal Code, Article 402 of Law No. 1 of 2023, which takes effect three years after promulgation in 2026, regulates unauthorized polygamy as follows:

1. Any person who:
 - a. enters into a marriage while knowingly being legally impeded by an existing marriage; or
 - b. enters into a marriage while knowing that the other party is legally impeded by an existing marriage, shall be punished by imprisonment of up to four years and six months or a fine of up to Category IV.
2. If a person as referred to in paragraph (1)(a) conceals from the other party the existence of a legal impediment, he or she shall be punished by imprisonment of up to six years or a fine of up to Category IV.

As stipulated, a Category IV fine amounts to a maximum of IDR 200 million ([Hayah & Anwar, 2026](#)). This provision demonstrates that the state seeks not only to protect the interests of the first wife but also to safeguard the integrity of marriage from manipulative practices involving false identity or misrepresentation of marital status, which are frequently found in society.

However, it should be emphasized that this offense is constructed as an absolute complaint-based offense (*klachtdelict*), as implicitly interpreted from Article 402 paragraph (2). This means that criminal prosecution may only be initiated upon an official complaint filed by the legal husband or wife.

The policy of criminalization introduced in 2026, with its increased severity of punishment, functions as an instrument of legal certainty aimed at minimizing the practice of unregistered marriages (*nikah siri*) and unauthorized polygamy. Such practices often disadvantage women and children. Moreover, the strengthened sanctions are expected to provide a more effective deterrent effect than previous criminal regulations ([Kemenkumham RI, 2025](#)).

Criminal Sanctions for Polygamy Without the Consent of the Legal Wife from the Perspective of *Maqashid Shariah*

The implementation of criminal sanctions against the practice of polygamy without the consent of the legal wife, as regulated under Indonesian positive law (Law No. 1 of 2023), which officially takes effect in 2026, has a strong philosophical correlation with and is consistent with the principles of *Maqashid Shariah* (the objectives of Islamic law) in realizing public welfare (*al-maslahah*). Within the framework of *al-dharuriyyat al-khamsah* (the five essential necessities of life), these criminal sanctions function as instruments for protecting *Hifzh al-Nasl* (protection of lineage) and *Hifzh al-Mal* (protection of property) ([Kharlie, 2022](#)).

Polygamy conducted illegally or informally without official state registration has a high potential to neglect the civil rights of children, such as legal certainty of lineage and inheritance rights, which, from the perspective of Islamic law, constitutes harm that must be eliminated (*al-dhararu yuzal*). Therefore, marriage registration becomes highly important. Galuh Retno Setyo Wardani, citing Jasser Auda, argues that marriage registration is not considered a formal requirement in classical fiqh, as classical jurisprudence was largely a product of scholars' *ijtihad* shaped by the Middle Eastern socio-cultural context of its time. However, when viewed through the lens of Jasser Auda's six elements of systems theory and analyzed within the contemporary Indonesian context and social dynamics, marriage registration emerges as a crucial procedure for achieving the fundamental objectives of marriage itself (Wardani, 2021).

Furthermore, a husband's act of engaging in polygamy by falsifying legal grounds and conducting the marriage secretly constitutes a violation of the principle of justice (*al-'adalah*) mandated by the Qur'an. Consequently, the imposition of criminal sanctions by legitimate authorities (*ulul amri*) may be categorized as *ta'zir*, aimed at safeguarding the dignity of women and children and maintaining family stability against arbitrary actions that endanger psychological well-being (*Hifzh al-Nafs*).

From the perspective of *Maqashid Shariah*, state regulations requiring a husband to obtain the consent of his legal wife and court authorization represent a preventive measure (*sadd al-dzari'ah*) to avert harm and prevent the misuse of the sacred institution of marriage as a means of mere sexual exploitation without fulfilling women's economic and psychological rights. Islamic law emphasizes that justice is an absolute prerequisite in polygamy, and the absence of consent from the first wife marks the beginning of substantive injustice within the household (Irfan & Nuroh, 2015).

Therefore, criminal sanctions for unauthorized polygamy are not merely administrative punishments but constitute a manifestation of Islamic principles of justice that have been transformed into national law. These sanctions aim to protect public welfare (*al-maslahah al-'ammah*) and prevent social disorder (*al-fitnah*) arising from marriages that lack legal certainty.

Conclusion

Based on an in-depth analysis of the discourse on Islamic Family Law in Indonesia, it can be concluded that polygamy without the consent of the legal wife has been criminalized, and individuals who engage in such practices are subject to criminal sanctions as stipulated in Articles 402 and 403 of Law No. 1 of 2023 (the New Criminal Code), which will be fully implemented in 2026. This regulation represents a concrete manifestation of the state's efforts to realize legally certain family justice and public welfare, particularly for women and children.

From a juridical perspective, this provision elevates violations of polygamy procedures from merely administrative offenses under the Marriage Law to criminal offenses punishable by imprisonment of up to six years. These sanctions are more severe than those under the previous Criminal Code and therefore provide stronger coercive power to encourage husbands to respect the institution of marriage and the rights of their legal wives by complying with applicable legal procedures and regulations. The classification of this offense as a complaint-based offense reflects a balance between protecting domestic privacy and enabling state intervention to

prevent legal manipulation and unregistered marriages (*nikah siri*) that often disadvantage women within household structures.

From the perspective of *Maqashid Shariah*, these criminal sanctions are fully aligned with the fundamental objectives of Islamic law in preserving public welfare (*al-maslahah*), particularly in safeguarding lineage (*Hifzh al-Nasl*), life and psychological well-being (*Hifzh al-Nafs*), and property (*Hifzh al-Mal*). The implementation of these sanctions functions as a form of *ta'zir* punishment intended to create a deterrent effect against illegal polygamy and to close avenues for harm (*dar' al-mafasid*) arising from secret or unauthorized polygamous practices. Sociologically, such practices often result in economic neglect, uncertainty regarding children's legal status, and psychological violence against first wives.

Therefore, the synchronization between the New Criminal Code and the principles of *Maqashid Shariah* affirms that compliance with state administrative procedures through court authorization is not merely a formality, but a *shar'i* obligation. This requirement ensures that the principle of justice, which constitutes an absolute condition for polygamy in Islam, can be substantively fulfilled and effectively protected under Indonesian positive law.

References

- Al-Zuhaili, Wahbah. (2022). *Al-Fiqh al-Islami Wa Adillatuhu, Jilid IX*. Damaskus: Dar al-Fikr.
- Ali, Zainuddin. (2021). *Metode penelitian hukum*. Jakarta: Sinar Grafika.
- Asrori, Ahmad. (2015). Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Muslim. *Al-'Adalah*, 12(2), 807–826.
- Auda, Jasser. (2022). *Maqashid Al-Syariah as Philosophy of Islamic Law: A Systems Approach*. London: International Institut of Islamic Thought.
- Departemen Agama RI. (2011). *Al-Hidayah: Al-Qur'an Tafsir Per Kata Tajwid Kode Angka*. Tangerang Selatan: Kalim.
- Hayah, Siti Sapitri Nurhasanatul, & Anwar, Syahrul. (2026). Kriminalisasi Praktik Poligami Tanpa Izin Pengadilan dalam Perspektif Hukum Perkawinan Indonesia. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 4(1), 3550–3561.
- Hidayatulloh, Haris. (2015). Adil Dalam Poligami Perspektif Ibnu Hazm. *Religi: Jurnal Studi Islam*, 6(2), 207–236.
- Ibrahim, Johnny. (2006). Teori dan metodologi penelitian hukum normatif. *Malang: Bayumedia Publishing*, 57(11).
- Indonesia. (1991). *Intruksi Presiden No. 1 Tahun 1991 Tentang Kompilasi Hukum Islam*.
- Indonesia. (2023). *Undang-Undang No.1 Tahun 2023 Tentang Undang-Undang Hukum Pidana Pasal 612 (mengenai masa transisi 3 tahun sejak diundangkan)*.
- Indonesia. (2025). *KUHP & KUHP: Berdasarkan UU RI No. 1 Tahun 2023 Dan UU RI No. 8 Tahun 1981*.
- Irfan, H. M. Nurul, & Nuroh, Nur Laily. (2015). *Nasab dan status anak dalam hukum Islam*.
- Kemenkumham RI. (2025). *Pedoman Penerapan Delik Perkawinan Dalam KUHP Nasional Pasal 402 ayat (2) UU No. 1 Tahun 2023*. Jakarta: Kementerian Hukum dan Hak Asasi Manusia RI.
- Kharlie, Ahmad Tholabi. (2022). *Hukum keluarga indonesia*. Sinar Grafika.
- Mahkamah Agung. (2026). *Direktori Putusan*. Retrieved from <http://putusan3.mahkamahagung.ac.id>
- Marzuki, Mahmud. (2017). *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media.
- Munir, Ahmad. (2024). *Hukum Keluarga Di Indonesia: Antara Teks Dan Realitas*.

- Jakarta: Rajawali Pers.
- Puspytasari, Heppy Hyma, Maulana, Alif, & Agustina, Febi. (2023). Poligami dalam hukum Islam dan hukum perkawinan. *Journal of Education Research*, 4(4), 2517–2524.
- Qutb, Sayyid. (2023). *Fi Zhilalil Qur'an, Jilid II*. Jakarta: Gema Insani Press.
- Soerjono, Soekanto, & Mamudji, Sri. (2010). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada.
- Syahrur, Muhammad. (2004). Metodologi Fiqih Islam Kontemporer, terj. *Sahiron Syamsuddin Yogyakarta: ELSAQ*.
- Wardani, Galuh Retno Setyo. (2021). *Sanksi Pidana pelaku Poligami Siri di Indonesia perspektif Maqashid Syari'ah Jasser Auda: Kajian putusan perkara nomor: 376 K/PID/2015*. Universitas Islam Negeri Maulana Malik Ibrahim.